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IN THE
Supreme Court of the United States
OCTOBER TERM, 1979

THE UNITED STATES OF AMERICA and THE CROW TRIBE OF INDIANS, MONTANA,
Respondents

V.

THE STATE OF MONTANA, MONTANA STATE FISH AND GAME COMMISSION, JOSEPH H. KLABUNDE, SPENCER S. HEGSTEAD, EARL L. SHERRON JR., ALFRED L. BISHOP, and PAUL B. TIHISTA; BIG HORN ROD & GUN CLUB; and CITIZENS RIGHTS ORGANIZATION,
Petitioners.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petition for Certiorari Filed January 21, 1980
Certiorari Granted April 14, 1980

JOINT APPENDIX
VOLUME III — EXHIBITS

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INDEX

VOLUME II

EXHIBITS

RESPONDENT UNITED STATES' EXHIBITS

	Page
Plaintiff's Exhibit No. 18, Memorandum from Tribal Officials to Various Departments dated May 4, 1921	1
Plaintiff's Exhibit No. 20, Letter to Commissioner of Indian Affairs from Asbury dated June 7, 1921	2
Plaintiff's Exhibit No. 28, Letter to Flint from Chambers dated February 6, 1976	3
Plaintiff's Exhibit No. 30, pp. 1, 21 and 22, Fish Report on Bighorn River	23

RESPONDENT CROW TRIBE'S EXHIBITS

	Page
Crow Tribe Exhibit No. 1, Treaty of 1825, 7 Stat. 266	26
Crow Tribe Exhibit No. 5, Act of May 26, 1864	29
Crow Tribe Exhibit No. 7, Act of April 11, 1882	44
Crow Tribe Exhibit No. 11a, Proceedings and Debates of the Constitutional Convention held in 1880, pp. 48 533, 627, 628, 678 and 922	49
Crow Tribe Exhibit No. 14, Act of March 3, 1891	54
Crow Tribe Exhibit No. 67, Crow Tribe Constitution and By-Laws	59
Crow Tribe Exhibit No. 71i, Resolution 62-02-A of the Crow Tribe relating to hunting and fishing upon the Crow Reservation dated August 11, 1961	75
Crow Tribe Exhibit No. 71j, Letter from Area Director Reinholt Brust to John B. Cummins, Chairman, Crow Tribe, dated September 21, 1961	77
Crow Tribe Exhibit No. 71k, Crow Tribal Resolution 64-20	78
Crow Tribe Exhibit No. 711, Letter from Superintendent of Crow Agency to Area Director dated December 3, 1963	80

Crow Tribe Exhibit 71m, Memorandum from Area Director to Tribal Chairman dated January 13, 1964 81
Crow Tribe Exhibit 71mm1, Crow Tribal Resolution 70-51 83
Crow Tribe Exhibit 71mm2, Letter from Assistant Area Director to Crow Tribal Chairman dated August 13, 1970 84
Crow Tribe Exhibit 71qq, Memo to Area Director from Superintendent dated November 14, 1973 86
Crow Tribe Exhibit No. 71rr, Memo to David Stewart, Chairman, Crow Tribe, from Area Director, James Canan, dated November 20, 1973 90
Crow Tribe Exhibit No. 74, House Executive Document No. 89, 43rd Congress, 1st Session (Part 1) 93

INDEX
VOLUME III
EXHIBITS

RESPONDENT CROW TRIBE'S EXHIBITS Continued

Page
Crow Tribe Exhibit No. 74, House Executive Document No. 89, 43rd Congress, 1st Session (Part 2) 129
Crow Tribe Exhibit No. 75, Story of Big Metal 185

PETITIONERS' EXHIBITS

Page
Fish and Game Exhibit No. 5, Letter dated April 30, 1952, from L. C. Lippert, Superintendent of the Crow Indian Agency, to Otto Wesley Bear Ground ... 197
Fish and Game Exhibit No. 9, Memorandum dated August 15, 1960, from A. E. Bielefeld, Field Solicitor, Billings, Montana, re "Act of July 12, 1960 (P.L. 86-634, 74 Stat. 869, 18 U.S.C. 1165), Hunting, Trapping or Fishing on Reservation Lands" 199

Fish and Game Exhibit No. 23, Memorandum dated February 16, 1966, from A. E. Bielefeld, Field Solicitor, Billings, Montana, to Area Director, Indian Affairs, re "Ownership of Bighorn River Stream Bed Below Reclamation Taking Area at Yellowtail to Reservation Boundary — Crow Indian Reservation" 204

Fish and Game Exhibit No. 32, Office Memorandum dated February 11, 1969, from Fletcher E. Newby to Frank Dunkle re "Draft of Bighorn River Management Plan" with attached copy of "Bighorn River Management Plan" 207

Fish and Game Exhibit No. 40, Letter dated September 8, 1972, from A. E. Bielefeld, Field Solicitor, Billings, Montana, to Don Wright, State Fish and Game Department, with attached copy of 78 I.D. 101 212

Fish and Game Exhibit No. 53, Letter from the Commissioner of the Bureau of Indian Affairs to the Chairman of the Crow Tribal Council re "Law and Order" 219

Fish and Game Exhibit No. 67, Treaty of Dancing Rabbit Creek, September 27, 1830 221

Fish and Game Exhibit No. 103, Memorandum dated November 1, 1960, from Johnston Willis to the Office of the Regional Solicitor, Portland, Oregon 233

Fish and Game Exhibit No. 115, Letter from Commissioner of Indian Affairs to Chairman, Crow Tribal Council 237

REPORT OF THE COUNCIL

CROW AGENCY, MONTANA TERRITORY,
August 11, 1873.

A council was held with the Crow Indians this morning, There were present Hon. Felix R. Brunot, chairman of the board of Indian commissioners; General E. Whittlesey, of Washington, and James Wright, late superintendent of Indian affairs for Montana, as a special commission under act of Congress of March 3, 1873, to negotiate with the Crow Indians, with Thomas K. Cree as secretary. There were present, by invitation of the commission, General Sweitzer, commandant at Fort Ellis; Captain Tyler, and Lieutenant Rowe, of Company F, Second Cavalry; Dr. Lightfoot, surgeon U.S.A.; Major Pease, agent for the Crows; Nelson Story, esq., of Bozeman, Charles Hoffman; esq., and Mr. Cross, traders; several of the employees of the agency, and the following Indian chiefs and subchiefs:

Of the Mountain Crows—Iron Bull, Blackfoot, Thin Belly, Bear Wolf Show-his-face. Good Heart, Shot-in-the-jaw, Crazy, Bear-in-the-water, Bull-goes-hunting, Crane-in-the-sky, Crazy Sister-in-law, Crazy-head, Long Horse, Old Crow, White Calf, Red Side, Onion, White Month, Bird-in-the-neck, Spotted Tail, Poor Elk, Little Iron, Chief Bull, Old Dog, Bell-rock, Along-the-ridge.

RIVER CROWS — Little Soldier, Wolf's Bow, Hunts-his-enemy, Boiling Leggin, White Rock, Black Bull, Cranberry, Bear-head, Poor Assinaboine, and many others.

In opening the council Mr. Brunot said:

Before we talk about business I want General Whittlesey to ask the Great Spirit to look into our hearts and make them all good.

General Whittlesey led in prayer, asking the God would guide the commission and the Indians in the deliberations of the council, and lead each right.

MR. BRUNOT said: I am glad to meet all my friends here now. I was sorry I could not see you when I came here last summer. I came then to hear what you had to say about yourselves, and to talk to you of what I thought was good for you. I have now come again, and am very glad to see you. My heart is good to you, and I hope you are all well to-day, (many had been sick.) The Great Father sent some words to you when I started to come, and he sent these two gentlemen with me to see you. He told us there was a new general at Fort Ellis, and he also has come to see you. Another man, Mr. Cree, comes with us to write down all that is said by the white men and the Indians. I want you to speak wise words, because they will go to the Great Father. These gentlemen are all glad to see you, and they wish me tell you so. The Great Father has heard many things from this country; some tell him one thing, some another. I see with my own eyes many things I will tell him when I go back. I know he thinks the Crows are all his friends, and he wishes to do what is good for you; and when he told us to come and tell the Crows what he thinks is best for you, it is because he cares for you. I want you to know that every word I say to you comes from my heart. I would not say a bad thing for my own child, nor would I for you, and all I say you will see is true. The Great Father knows that the Crow Indians made a treaty at Fort Laramie. I was not there, nor the Great Father, but he sent commissioners there and some of your chiefs were there; but the treaty is printed, and he gave us

this printed paper. It says, "This is the treaty made at Fort Laramie." I hold it in my hand; it has some chiefs' names signed to it. The names are: Pretty Bull, Wolf Bow, Mountain Tail, Blackfoot, White Horse, Poor Elk, Shot-in-the-jaw, White Forehead, Pounded Meat, Bird-in-the-neck, and The Swan. These are the names of the chiefs that signed the paper. That treaty says where the Crow land is to be. I think it is a good country. It is along this river about seventy-five miles above the agency, and then goes toward where the sun rises until it crosses the Big Horn, and goes half way between it and the mouth of the Rose-bud River, about twelve miles this side of Porcupine Creek. This is what the treaty and the map say. That is the country that belongs to you forever, or until you wish to sell it. Now, the country across the river, where you go to hunt buffalo, the treaty says, you can go to while the buffalo are there; but when the game is gone away from there that is all to be white man's land. The Great Father has heard that the country southwest of here is not of much use to the Crows, and that the whites are going into it. I have seen some of it along the river, and I think it is very good; but some of it is very rocky and mountainous. It is good only for people who wish to hunt gold. I have seen white people going past the reservation to Clark's Fork; I am sorry to see them going there. I do not want to see white people go upon Indian land so long as it belongs to the Indians and they want to keep it. The Great Father at Washington does not want whites to go upon land that belongs to the Indians. He has heard that the whites have gone there, and he thought, to prevent any more trouble, that the best thing for the Indians to do was to sell that land. So last winter when the Great Father's council came together and heard about these white people being

on the Indians' land, they passed a law to send out men to ask you whether you would sell these lands. This law says—

"That the Secretary of the Interior be, and he is hereby, authorized to negotiate with the chiefs and head-men of the Crow tribe of Indians in the Territory of Montana, for the surrender of their reservation in said Territory, or of such part thereof as may be consistent with the welfare of said Indians: *Provided,* That any such negotiation shall leave the remainder of said reservation in compact form and in good locality for farming purposes, having within it a sufficiency of good land for farming and a sufficiency for water and timber; and if there is upon such reservation a locality where fishing could be valuable to the Indians, to include the same if practicable; and the Secretary shall report his action in pursuance of this act of Congress at the next session thereof, for its confirmation or rejection."

He says the men must not buy anything from the Indians if it is not good for you to sell it. The Indians must keep plenty of land for themselves and their children to live on. The land they keep must be good for them to farm and must have a good place for an agency, and it must be good for them. That is one thing the Great Father told us to say to the Crows, and it is for you to think about. This treaty, after awhile, comes to an end. You always have the land, but in thirty years the annuity goods stop. It says all who stay upon the reservation must be fed for four years. I am sorry it is not longer, but that is what the treaty says. Suppose the white men continue to come into the mines; they get too numerous, and after awhile there may be trouble between them and the Indians. I hope the trouble will never come. I want, as long as I live, if I choose to come here, to

have the Crows take me by the hand and know I am their friend. When many men think one way and many think another way, it is best to talk it over and see if all will not come to think alike. I think this is best. The Crows do not care about digging in the mines. It would not be good for you to do so. If you can sell to the Great Father the piece of land that has the mines upon it, he will put away the money and for it send useful things to you every year. That is what I want you to think about. The Great Father is making an iron road that is coming along the river. It will make it very easy to bring things to the Crows and the people who live in this country. Sometimes the Great Father sends the goods to the Indians; they start them in the spring, but they do not get here until the next spring. They ought to come before you go upon your fall hunt, that you may have everything with you. When the railroad is done the goods will come quick. Perhaps he will make the railroad on the other side of the river, perhaps on this side; I do not know which. This side is Crow land. You can say whether you want it on your land or not. You can think about that. If you sell a part of your land you must have a better place than this for an agency. We want to help you pick out the place. You will think about that too. I have said enough; now I want to hear you talk.

Several Indians here came forward and presented buffalo-robes, and two presented pledges, each representing a horse, to the members of the commission. The commissioners demurred at accepting the presents, but were assured that the Indians would be offended if they refused. The commissioners then accepted them, but afterward gave them away to needy Indians.

MR. BRUNOT. I have been to see many tribes of

Indians. I go to see them because I want to do them good. Some places the men, to show that they are my friends, bring me something which they wish to give me. I always tell them I do not come to get anything from them; that I have plenty myself, and I do not want to take anything that is of use to them; and now the Crows have come, and to show that your hearts are good to us you have given us these robes. I have let you do so because it is your way, and I do not want to do anything but what is kind and right.

BLACKFOOT. When we see our friends we give presents to each other. My father comes and sees me; he gives me something and I take it. We give you something and you ought to take it.

MR. BRUNOT. A long time ago, when men wanted to get anything from the Indians they brought a great many presents. It was because they wanted to get something away from them. If I come to the Crows and bring you a lot of presents you will think I want to get something away from you (To the whites: We prefer that what is said should go to the Indians through the interpreter, and we do not want others who talk their language to talk with them about what is said.)

OLD CROW. I give you a present. We want you to take the sickness away from us.

BLACKFOOT. You call the Great Spirit Jesus in your language; we call him in the Crow language E-so-we-wat-se. I am going to light the pipe and talk to the Great Spirit. (He lighted the pipe, and, looking up reverently, said:) "The Great Spirit has made the red man and the white man, and sees all before Him to-day. Have pity upon us! May the white man and the Indian speak truth to each other to-day. The sun that looks down upon us to-day, and gives us light

and heat, sees that our hearts are true, and that what we do is good for the poor red man. The moon, that shines on us in the night-time, will see us prosper and do well. The earth, on which we walk, from which we come, and which we love as our mother — which we love as our country — we ask thee to see that we do that which is good for us and our children. This tobacco comes from the whites; we mix it with bark from the Indian trees and burn it together before Thee, O Great Spirit! So may our hearts and the hearts of the white men go out together to Thee and be made good and right."

As he invoked the Great Spirit, the earth, &c., the pipe was reverently held in the direction of each, and, after this, was presented to the commissioners and then to the chiefs to smoke, after which ceremony Blackfoot said:

BLACKFOOT. I am going to have a long talk with you. My Great Father sent our friends to see us. We see each other; that is good. You came here last summer; we were sent for to see you. We were back of the mountains when we heard of you, but high waters and the mountains prevented our coming. You said you did not see us, and you were sorry for it. We could not come any faster. This summer we were on this side, near the Yellowstone, where we were getting skins to make lodges. In the fall the traders will want our robes. We will then go over the Yellowstone to Judith's Basin to hunt. Since I was a boy I recollect that is what the Crows always did. When the Crows meet a friend they always give him something; so we do with you. You say you have a book that tells about the Great Spirit. We always give the Great Spirit something. I think that is good. We see the sun, we give him something; and the moon and the earth, we give them something. We beg them to take pity on us. The sun and moon look

at us, and the ground gives us food. You come and see us, and that is why we give you something. We are men like each other; our religion is different from yours.

The old folks are dying off; then who will own the land? I went to Fort 'Laramie; the old Indians signed the treaty. We came back to the camp and told the young men, and they said we had done wrong and they did not want to have anything to do with it. They said, "We love the Great Father, and hold on to the hands of our white friend. All the other Indian tribes fight the whites; we do not do so. We love the whites, and we want them to leave us a big country."

All the other Indians go and talk with the Great Father; you take them to Washington; they are bad; they hide their hearts; but they talk good to the Great Father, and you do more for them than for us. This I want to tell you; yesterday you spoke to us and we listened to you. If you wish to have peace with all the Indians get them all together and make peace. Than I will make peace with them, too.

The Great Spirit made these mountains and rivers for us, and all this land. We were told so, and when we go down the river hunting for food we come back here again. We cross over to the other river, and we think it is good. Many years ago the buffalo got sick and died, and Mr. Maldron gave us annuity goods, and since then they have given us something every year. The guns you gave us we do not point at the whites. We do not shoot our white friendss. We are true when we look in your face. On our hands is no white man's blood. When you give us arms to go and fight the Sioux we fight them to keep our lands from them. When we raise our camp and go for buffalo some white men go with us; they see what we are doing; they see that we jump over the places that are

bloody. On the other side of the river below, there are plenty of buffalo; on the mountains are plenty of elk and black-tail deer; and white-tail deer are plenty at the foot of the mountain. All the streams are full of beaver. In the Yellowstone River the whites catch trout; there are plenty of them. The white men give us food; we know nothing about it. Do not be in a hurry; when we are poor, we will tell you of it. At Laramie we went to see the commissioners. Now commissioners come to see us, and we listen to what you say. The commissioners told us at Laramie if we remained good friends of the whites we would be taken care of for forty years. Since we made that treaty it is only five years. You are in a hurry to quit giving us food. I am a young man yet; my teeth are all good. They told us at Laramie we would get food till we were old, and our children after us. This is not the place for the agency, on this point of rocks. We would like to know who built the agency here. They told us they would give us our food. They promised to send a good agent and good traders, and if they were not good they would be taken away. Pease never treated us wrong; the young men and the children he always treated right; all that was sent for us he gave us; he was not a thief; he treated us well, and we do not want him to go away from us. On Sheep Mountain white men come; they are my friends; they marry Crow women, they have children with them; the men talk Crow. When we come from hunting we get off at the doors, and they give us something to eat. We like it. We raised Shane, (the interpreter;) he was a boy when he came here. You ask us what we have to say, and that is what we tell you. Here is the doctor; when our people are sick he doctors them. He has two children by a Crow woman; we like him. Here are our traders; when we go hunting they give us ammunition; they gave me a

revolver to kill buffalo. We do not know anything about Cross, (a new trader) we do not know his face. We want the soldiers at Ellis to take the part of the Crows. When they come here to see the giving of annuity goods we give them robes to take with them, and when they hear bad talk about the Crows we want them to speak well of us. When we camp here some of the whites run off with our horses into the mountains. We know about it, but we do not say anything. We have a strong heart, as firm as a rock, and we say nothing about it, but you want to hear what we have to say and I tell you. In Gallatin Valley the Cheyennes, Arapahoes, and Sioux made a raid and the people blamed the Crows with it. We want them to quit speaking bad about us. On the Missouri River the whites have married into all the different Indian tribes; their brothers-in-law, the white men, come here and steal our horses. We follow them and find who have them. Some of the Crows went to the Missouri River and got some Crow horses. The white people sent word they were their horses, and we sent them all back. We claim our horses, but they are not brought back.

When we set up our lodge-poles, one reaches to the Yellowstone; the other is on White River; another one goes to Wind River; the other lodges on the Bridger Mountains. This is our land, and so we told the commissioners at Fort Laramie; but all kinds of white people come over it, and we tell you of it, though we say nothing to them. On this side of the Yellowstone there is a lake; about it are buffalo. It is a rich country; the whites are on it; they are stealing our quartz; it is ours, but we say nothing to them. The whites steal a great deal of our money. We do not want them to go into our country. We would like needle-guns to get game and fight the Sioux; this we tell you.

MR. BRUNOT. Blackfoot says he wants the soldiers to speak well of the Crows. I will tell him what took place last summer. When I came here, white men in the Gallatin Valley told me the Crows had killed two white men, and took their horses. I did not believe it, but I wanted to find out. I went to the soldiers and asked them about it; they said it was not the Crows. So the soldiers did speak for the Crows, and as long as the Crows do well the soldiers are their friends. Afterward I found out who killed the men and took the horses; it was Arapahoes and Cheyennes. I wrote a letter to tell the governor who it was. I think he will put it in the newspapers, and everybody will know that it was not the Crows. Blackfoot says the white people are digging in the mountains, taking away your gold. I know that myself; I saw them go there. I told them it was not right. The Great Father has heard about it; and he has said the Crows had better let the people have the gold, and he will pay you for the land. The Crows have done well. You have not hurt the white people who are on the reservation and in the mines, and you tell us you are the white man's friends. The Great Father does not want any of these whites to hurt the Crows. He says for us to tell the Crows that if you let the white people have the land he will give you things you need for many years. I have been looking about over your reservation. I see you do not go much where the mines are. I think it would be good for you to let the white people have the land, and the Great Father for many years will give you what you need for yourselves and your children. I do not want this on account of the people who are on your land, but I think it will be good for you and your children. It is your land, and you can do what you please with it. If you want to keep it, I have nothing to say, but I think it would be good for

you to sell it.

Blackfoot said he went to Laramie, and, when he came back, the young men did not agree to what he said. I do not want that to occur again. Whatever the chiefs do, I want the young men to know all about it, and to agree to it, and then no one can say it was wrong. You must think about this, and be sure you are right. It is your business; it concerns you, and you must do what you think is best. If you decide to sell the land from Clark's Fork to the Yellowstone, we will talk about what the Great Father must give you for it. If you do not want to sell so much, you can fix some other line. That you will think about yourselves, and will tell me what you think.

BLACKFOOT. I do not want whites to go to Heart Mountain.

MR. BRUNOT. The upper part of Clark's Fork is not on the reservation.

BLACKFOOT. I do not care so much about the part on the Yellowstone and in the mountains, but above in the valley, it is good. I am going to tell you I treat my friends good. When you speak to me I say, yes! yes! yes! Along the Muscle-Shell and Teton Mountains is Judith Basin. Many men go into that country wolfing; they kill game. We thought, when we saw them, that white men are giving us food; when we have to buy what we want, they will be ashamed when they see us. When we have a friend we take him to our tepes. We give him a robe to cover himself. When we meet a wolfer, if he is poor, we give him a pair of pants and moccasins, or a blanket. We shake hands with him, and send him away all right. We would like them to quit wolfing; there are getting to be too many of them, and we want them to quit. (The commissioners examined the

map.) What have you decided about on the map?

MR. BRUNOT. We were looking at the map to see where was a good line, if the Crows decided to sell the mountain part of their reservation. Some people think it would be best to sell from the mouth of Clark's Fork up to the Yellowstone; others think it would be best not to sell so much, but to take some other line this side of that; but it is for you to make up your mind how much you will sell, or whether you will sell any. It is your land; you can do as you please about it.

We have told you what the Great Father wants you to do. I have told you I think it would be good to let the miners have the mountains where they are, and where they are going, and for the Great Father to pay you. I think it would be better for you and your children; but, if you do not think as I do, it is all right.

BEAR-WOLF. These are old men, (the chiefs.) We are young men; we are just grown up; we do not want to sell any land.

IRON-BULL. You are my friends.

Here he was interrupted by the arrival of a mourning people. Long-Neck, whose brother was killed in a recent fight with the Sioux, with his squaw, came in weeping; he placed his hands on the head of each commissioner and sang a mourning song, all the Indians looking solemn, and some weeping.

LONG-NECK. My brother is killed by the Sioux; I want to revenge myself. I come to ask you to give me good luck.

After the mourning party had gone Iron-Bull said: We are tired. I will say a few words and quit talking for to-day. Look all around us! There is no white man's blood; we do not set our feet upon his blood. When you gave us flour did we ask for it? Did we

ever ask for sugar of beef? What made you give it to us? We never asked you to give us pants and stockings. You have not asked me to say what I am now going to ask you. I have asked why food is given us, and I was told we were getting food because we were friends of the whites. We like the food; do not quit giving it to us when four years are up. Here is our agency; we were looking for a white man to take charge of it. We know Pease's face. All the people, old men, young men, women, and children know Pease. If you put anybody else here as agent we will not feel like living here any more. We do not want Story and Hoffman, our traders, to go away. There is a tall man in the store called Cross; he makes bad faces to us; he is a hard man; we do not know him. I am not a fool. I am the Iron Bull! I love all white men. The Sioux, Cheyennes, and Arapahoes do not like the whites; if you do not know it, I tell you so. The whites have no horses on the Sweet-Water or in the Gallatin Valley; and over to the Missouri River all their horses are in the Sioux camp. All about they have killed white men and scalped them. If you like us, do not give the Sioux any ammunition or guns. Do what I ask you. Let people keep their cattle on the other side of the Yellowstone. The whites would like to move on our land; do not be in a hurry. Here is a good place to farm, and there is wood on the mountains. You saw that man who came here and cried. The Sioux killed his brother, just as they would you or me. Have pity on us and take the sickness away from the Crow camp. when we raise camp we will go for buffalo; we will make a medicine lodge near the lake. If we come back and nothing happens, we will be glad to see you. When we raise camp we want you to give us ammunition to defend our camp. A long time ago a peace commission sent for me to the Yellowstone. I went with Shane, (the in-

terpreter;) they gave me blankets. I could blow through them, and they went to pieces; they gave us nothing that was good. I asked them to do something for us. They said "Yes," but they have done nothing for us. There are plenty of buffalo yet. The soldiers went down the other side of the Yellowstone; we said nothing because we loved them. When there is no game for us to eat, then we will come and tell you about it.

MR. BRUNOT. One thing I want you all to understand. You say you want Mr. Pease for agent. You know his face and like him; so do I, and I think the Great Father likes him, too. The Great Father, when he has his men, he puts them where he wants them to go; he puts them where he pleases. General Baker was over at Fort Ellis; the Great Father took him away and sent another man there. When I came here I knew Major Pease was here; these gentlemen knew Pease was here, and that is all we know about it. If the Great Father wants to take him away you must think it is all right. Major Pease is your friend and will always be so. If the Great Father sends anybody else, that is for him to do as he wishes. He did not tell me anything about it. But if the Great Father sends a new agent or trader, you must try them and see if they are good. If a man comes who does not do right, tell the Great Father, and he will send another man. We have nothing to do with it. You are all tired, and you want to talk among yourselves about what has been said, and I think we had better stop. We will meet to-morrow and have other things to say, and we want you to talk about it and tell us what you have to say.

LOW HORN, (taking Pease and putting his arms about him.) We love him, and want to keep him. We all love him, and want him to remain with the Crows.

MR. BRUNOT. When I talk to the Crows I mean all — the River and Mountain Crows both. I think if a man has a family it is good for all of them to be together, and not divided up. I think the River Crows ought to stay with the others; you ought all to be one family. I thought all the River Crows would be here, but some have not come. I hope you will all be friends together. We are very sorry for your people who are sick, and for those who mourn. We cannot help it. The Great Spirit does everything; but we will ask the Great Spirit to take the sickness away, and I hope he will make you well. That is all we will say to-day. To-morrow morning, at nine o'clock, we will meet in council. What you have said has been put on paper, and will go to the Great Father. There are some things I do not speak of, because I do not know about them, but all I do say is true. I will take your words to the Great Father, and he will do as he pleases. I want you to talk among yourselves, and tell us to-morrow what you will do about your land. When I came away from Washington I did not bring any presents, because I thought if I came to the Crows bringing a lot of presents you would think I would take advantage of you. But now that we are here and see you, we think we would like to give you something. We have to do the best we can. We have a few blankets we wish to give you. We give them to you to show you that we are your friends, the same as you showed us when you brought the robes to us.

Fifty blankets were then distributed among the chiefs and head-men; after which the council adjourned.

Second day:

AUGUST 12, 1873.

The council convened at two o'clock. Blackfoot made a long speech to his people, telling them of the number of whites that are coming into their country and going into Judith's Basin, eating the game, and their stock eating the grass on which the buffalo and antelope, the Indian food, feed.

The council opened with prayer by General Whittlesey.

MR. BRUNOT. I do not wish to say the same things I did yesterday. I think you heard them all, and have thought of them, and are ready to say something in regard to the business of which we talked. We have been thinking about it, and so have you. Now you have something to say about it, and we are ready to listen. The business about the land is yours more than it is anybody else's. If a man has a great thing to think about he does not mind little things; if he sees the sun, and can look at that, he does not want to look at a little camp-fire. Some other time he will look at the little things; so now we will talk of the great matter, and some other time we will talk of the little things.

BLACKFOOT. What men say one to the other is good. Look at me. I am a big man. I have a big heart, and what I say is true. The whites have been digging gold at Emigrant Gulch for ten years. Perhaps the white men think the Crows do not know it, but we do know all about it. Above Emigrant Gulch I hear the whites have found other diggings. I love the Great Father, and I love my white friends. I will talk to you. The whites have been stealing our property. We are men, and know of it, and we will some day ask for the pay for our gold that the white men took from us. We used to get up the Yellowstone, and cross to the lake, and go through to Heart Mountain on the Stinking Water. That was

our country. This summer we intend to go to Heart Mountain to get skins for our lodges. One time on Big Rocky (Rosebud) our camp met a wagon and white men with it. Four chiefs went and shook hands with the white men. The white men pulled out their revolvers and shot one of the Crow chiefs and killed him, and shot another who got well. When we heard of this we cried; we though much about it, and then tried to forget it, because the white man was our friend.

Mr. Brunot. When was that?

Blackfoot. When General Sully first came into the country to fight the Sioux, (1862.) We do not understand you about the country. We understood Heart Mountain and Stinking River were in the Crow reservation, but you say it is not. Above the canons they have been digging gold; now the whites want to take Heart Mountain, and we do not understand it. From Emigrant Gulch on this side we do not want to sell; above it we will sell you. We go to Judith Basin in the winter and locate on the creeks. The buffalo and antelope are ours. The whites kill them and put poison on them to kill wolves; they kill our horses with their poison. We say it is all right, because we love the white man and hold on to his hands. We are now telling you what we think. Dr. Hunter went down the river to the Warm Spring and located himself down there. I want you to hear and believe what I say. When we go for buffalo we find trappers hunting all over our country and men going everywhere on it. They think we do not know of it, but we do. White men who have married our women are stopping here for the Crows. When we kill our enemy, one who is hostile to everybody, the whites ought to be glad. A long time ago young White Bear, an Indian brave, and a white man, his friend, went together to fight the Sioux. They fought side by side. The white

man was killed. Did the red man run away? No; he fought by the side of his white friend; and avenged his death. They fought hand in hand; and so they died. The bones of the red man and white are now mingled together. That shows we are friends of the white man; and as the red man and white man died, hand in hand, so ought we to live.

Right close to the agency this year Dr. Frost, a white man, and two Crow women were killed by the Sioux. The white man and the red women died together. That is why we want to war against the Sioux. The white men did not avenge the death of the white man, but we avenged the death of both the white and the red people. We think, when we died together as friends, we ought to live together as friends. We say, yes, yes, to what you say, and we wish to do what is best for both whites and Indians.

What we were told at Laramie I have in my heart. They told us to look out a white man with a good heart for our agent. We have found him. Here he is in Pease. He does not drink whisky; he likes us. He does not offer us whisky, and we like him. Pease never made any Indians mad at him; the children all like him; he is kind to all of us. What we ask you to do is to permit him to stay, and then we will listen to what you say. You come to hear what we have to say. I tell you, up above, on the river, the whites are digging gold. You can buy that country for the whites. We do not hide anything; we are men. From Emigrant Gulch to the Forks you can have; below it you cannot. I am a man, and that is what I say. We do not want a railroad along side of the river. What do you think about it? We do not want Pease to go away. We never hurt a white man, and we can always look in the white man's face and shake hands with him. The Nez Perce's Indians made peace with us, and they like us. The Bannock Indians shade

hands with us, but they do badly. You should talk to them. When we went to Laramie the commissioners asked us to make peace with the Snakes. We did so and love them; we know and like Wash-a-kie, and we made peace with him. If you count the Crows there are fourteen hundred men. We would like you to give us guns enough for them, and plenty of horses, and to give us food for all time, as long as there are Crows, and that is what we want for our piece of land.

CRAZY SISTER-IN-LAW, (a chief.) We do not want Pease to go away. My boy does not want him to go away. He gives you a horse (to the commission) to keep Pease here. (He gave the commissioner a stick as a pledge representing a horse.)

Mountain Chief's daughter and Crazy Sister-in-Law's little daughter presented robes, saying, "We want Pease to stay with the Crow tribe." All the children gathered about Major Pease to hold on to him.

The council here adjourned unceremoniously, after which—

WHITE MOUTH said, "Blackfoot did wrong in sending everybody away from the council. I do not feel right about it. I thought the council was going to be a good one. We cannot help it, but we do not like it."

Other Indians came forward and said they had nothing to do with breaking up the council. Plenty of others wished to talk, but Blackfoot did it all.

Council re-assembled at five o'clock. Iron Bull, head-chief, being sick, did not return.

MR. BRUNOT. Do any of you want to talk?

BLACKFOOT. You asked us to come back and now we want to hear what you have to say.

MR. BRUNOT. We are glad to see the chiefs back,

but we would like to see more of the young men, and hope more will come. I want to talk a little about what Blackfoot said, and about some other things. I want to talk as I always do, true and straight. I don't want my words to be like the winds that go off and are never seen again. I want them to go into your ears and into your hearts, and if you do not hear them now, some day you may be sorry for it. I want you to remember all I say, and some day you will say, that white man told us the truth. When a man sees the whirlwind coming, does he tell it to stop? No! He gets out of the way; he cannot stop it. A wise man looks ahead; he sees what is coming and he gets ready for it. I see what is coming over this country. I know what is good for the Indians, and I want you to know it, too. I have been on the Platte, and on Wind River, and on the Missouri, and away to the ocean, and what do I see? You do not see it, but I do. I see the white man's towns coming further and further; they are almost here. A few years ago, where these towns now are, there were buffalo. The buffalo used to be on the Platte, as they are now on the Big Horn and Powder River. They are all gone now. Why are they so plenty here still? They have been driven from there and have come up here. The Sioux cannot find any buffalo on the Platte, so they come up north to hunt them. If the Crows went to the Platte and the Republican, they would not find any buffalo there. They have come up here. And when they are killed off here, they will be all gone everywhere. Buffalo are the Indian's bread, but they are going away, and soon will be all gone, and the friends of the Indians want them, by that time, to have something else. We want you to have lands that you can keep, so that you will have plenty to eat; we want you to teach your children so that they may live on white man's food. These Indians who

have eaten white man's food know it is good. When you went to Fort Laramie you made a treaty with the white men. I was not there, but here is the paper that tells me what the treaty was. It says, "The Crows shall have a piece of land always." I t is for you and your children. That piece of land was marked on these maps. Some of you think it was larger than it is. I do not know who told you that. It was wrong; it was a mistake. If the Crows think the land is not large enough, I am sorry; but I see how hard it is to keep this piece of land for you. Some of it has the gold mountains on it. I see wherever gold mountains are, there white men go. They ought not to come here for it; it is not their land. The Great Father does not want them to come on the Crow land, but he is a long way off; he cannot see with his own eyes into the gulches and mountains. He has heard about the gold mountains and the people in them. He has also heard that the Crows do not go into the mountains much, and he thinks if the whites go into the Crow mountains, the Government ought to pay you for the lands. If the land goes away from you, by men going here, there, and everywhere, after a while it is all gone and you have nothing for it, but if you sell the land and let the people go into it, and the Great Father pays you for it, year after year, you will get things you need, and have them always. You will get them after the buffalo are all gone. The Great Father is making the railroad. It is like the whirlwind. I cannot stop it; nobody can. I might as well try to stop the Yellowstone with my hand. I cannot do it. The Sioux thought they had stopped the Great Father's soldiers last summer. The Great Father told the soldiers when they went there, if they met the Sioux and they made trouble, to come back, till they could talk about it, and now there are more soldiers coming this way than all the Sioux

warriors number, and they are going to put a warhouse on the border of the Sioux country, at the mouth of Powder River. You have not seen many of the Great Father's soldiers here; very few. But away to the east there are many thousands of them.

Now, about this land. I told you the Great Father wants to give you pay for it, and have you sell the mountains at this end of your reservation. It belongs to the Crows, and the Great Father does not want it to be taken away without your getting pay for it. Blackfoot talked about selling a little piece at the upper end. Suppose we were to say that will do; we will pay for that little piece; it would do no good. Here are mountains that people are going into now, and the same trouble would come again. Is not that so? I want to tell you another thing about the treaty, and I want you to know that it is not I who say this, but it is what the treaty says. I am going to tell you what the paper says. The Crows have for their lands always what is marked on this map, (showing the bounds of the reservation on the map.) Here is Crazy Mountain on the River; here is Judith Basin; here the Missouri. The treaty says this is the land of the Crows forever, (marking reservation.) Then it says as long as there are any buffalo, and as long as the white men are not here (in Judith Basin) with farms, they may go there and hunt. So on Tongue River and Powder River; you can go there. Blackfoot says white people are going into Judith Basin. The treaty does not say that whites dare not go there, but the treaty says Indians and whites both can go there. I never was in Judith Basin, but I have heard of it, and I have heard that it is a better country than this; that it is good for grass, and that there is plenty of water, wood, and game. I know the railroad is not going there, but that it is coming along here. I think if the Crow Indians could have Judith Basin

instead of this, so that they would own it, and could come out and hunt here, it would be good. The way it is now, the Crows, the white men, and any other Indians can go there, but other Indians cannot come here without the permission of the Crows; but if the Crows had that for a reservation, the whites dare not go there at all, and other Indians could not go there with the Crows permitted them to do so. But the Crows could come here and hunt as long as there is game. That country there is not as large as this country here, but the country all around it you could go to all the same; but, because that country is not so large, if you go there you ought to have some pay for the difference. The treaty says the Crows were to be fed four years; somebody told the Crows it was forty years; that was a mistake; it was not true. This is the last year, but I do not want it to stop. I want that they shall have plenty to eat. The Great Father at Washington wants them to have plenty to eat, but every four years they have a new Great Father at Washington; perhaps some other man may be Great Father some day, and he may not want you to have these things. I hope you will always have them until you learn to make them like the white men; but I cannot tell; a new Great Father may be a different kind of a man. Now you can fix it so that it does not make any difference who the Great Father is, but you can always have plenty. You can do it this way: if you like Judith Basin, and want it for a reservation, we can go and say to the Great Father, it is smaller than this reservation, and for that reason you ought to have something always every year, in place of the big piece of country which you sell. We can ask him to give the Crows Judith Basin, and, because you give up this reservation, to give you food and things you need, so that you will never want. We can ask him to give you this, the interest

of a million dollars, and every year you would get fifty thousand dollars in food and such things as you need; that is what we would ask the Great Father to do, and we think he would do it, but we do not know whether he would do it or not; he might think it too much, but if he thinks it is too much, and does not agree to it, it would be all the same as it is now. I have told you much that I think and what I tell you is what I think is the best thing that could be done for you. These gentlemen with me all think the same way. I do not think I am wrong, and I know that I will not be afraid to meet the Crows anywhere, here or in the spirit-land, for what I have done is for your good and all I tell you is true and comes from my heart.

BLACKFOOT. What you have said we have listened to and we think it is true. At Laramie the treaty was made. We did not feel right. We had made a long journey and were tired and sick. They gave us some horses. They thought they were doing a big thing, and making us a big present. But the horses were wild like the antelope. We caught them with the lasso. They jumped and kicked; we held on tight to them, but they got away from us; we were sick hunting them, and when we got home nearly all of them were gone. The commissioners told me that we should have plenty of food given us for forty years. They were big men who talked with us; they were not drunk when they told us. We were men andheard them, and so it ought to be written in the treaty. I told the commissioners at Laramie that I had been the Sioux commit a great massacre; they killed many white men. But the Sioux are still there and still kill white men. When you whip the Sioux come and tell us of it. You are afraid of the Sioux. Two years ago I went with the soldiers; they were very brave; they were going through the Sioux country to Powder

River and Tongue River. We got to Prior Creek, just below here in the Crow country. I wanted to go ahead into the Sioux country, but the soldiers got scared and turned back. I was there and so were others who are here; they know what I say is true. The soldiers said they were going to Tongue River, but they got frightened at the Sioux and turned back. The soldiers were the whirlwind; they went toward the Sioux country, but the whirlwind turned back. Last summer the soldiers went to Prior Creek again; again they said they were going through the Sioux country, but they saw a few Sioux; they were afraid of them; they got scared and turned up to the Muscle-Shell, and went back again; again the whirlwind was going through the Sioux country, but again the whirlwind turned back. We are not the whirlwind, but we go to the Sioux; we go into their country; we meet them and fight, but we do not turn back; but we are not the whirlwind. You say the railroad is coming up the Yellowstone; that is like the whirlwind and cannot be turned back. I do not think it will come. The Sioux are on the way and you are afraid of them; they will turn the whirlwind back. If you whip the Sioux, and get them out of its way, the railroad may come, and I will say nothing.

We were born on this side of the Yellowstone and were raised here. It is good land. There is plenty of good land here. Timber and grass and water are plenty, and there is much game in the mountains. You talk about Judith Basin, and say you are going to give us plenty to eat. We do not want to exchange our land. You are my friend. If we were to go to the white man's country and bloody it as they do our country, you would not like it. For many years I have known the whites. You have a big heart, but it is not so with the white men who come into my country. Some of them never sucked their mother's

breasts. I think they were raised like the buffalo, and sucked a buffalo cow for their mother. They have no hearts. I was not raised in that way; I am a man. I was raised and sucked milk from my mother's breasts. There is no white man's blood on our hands, and I am no ashamed to shake hands with you. What I say is true. I am your friend. The sun sees me and hears what I say. The Great Spirit hears me and knows it is true. Did I ask these white men to come here and crowd me? Buffalo robes are my money; we have some buffalo left yet. If I go to the buffalo country and bring no robes back, the traders will not look at me; they won't be glad to see me and shake hands with me, and say "How," "How," as they would if I had plenty. I think you had better leave Pease with us as he was before. If you put anybody else here, very soon they will kick me in the face with their foot. All the men who have Crow women, we don't want them sent away. They are my friends and I want them to live as I do.

MR. BRUNOT. About Pease I have nothing to say. I told you I liked him; and I like other good men who do right to the Indians. The Great Father does as he pleases about these things, so I have nothing more to say about it. But as to what I said about Judith Basin. I know every man cannot think alike. Blackfoot in some things does not think just as I do. He says what he thinks; I say what I think; both are men. What difference if we do not think alike in everything? We can be friends. I am not afraid to say what I know is right; so Blackfoot says what he thinks is right, and I like it. The Great Father sent me to talk to the Sioux; they asked for guns to fight the Crows. I said they could not have them. I was not afraid of Sioux soldiers; so now I would not be afraid of my friends, the Crows. If I am not afraid to speak to enemies, I am not afraid to speak my mind

to my friens. I want you to know, and you do know, that what I say is true, and that it is for your good, so you will think and talk about it, and perhaps, after awhile, you will think I was right. Suppose you think I made a mistake; you are still my friends; you are the white man's friend all the same. But you must talk about these things and see if they are not good. What have I been waiting for? Because I like you and want to do something for you. I have staid a long time; we have had two days' talk; we talked of things that were in the past and of things that are now. But this matter of the land is the most important thing; if we get it fixed we can settle the little things afterward. The agency buildings were burned up; they ought to be built somewhere else very soon, and they ought to be built and in a good place where the stake will be down strong; where there is plenty of wood and water and good farming-land, and where the Indians can stay in the winter without having their heads blown off by the wind. You want it where you can stay. Suppose the question of the land is settled; then we can locate the agency. If you decide to go to Judith Basin, we will put the agency on some of the streams there in a good place. Suppose you do not want to go there; then the agency must be put on some creek here. I am afraid if the stake is put down here it will not be a strong stake in the ground, but if it were put at Judith Basin, I think it would be, but it is for you to know what is best. You need not talk till you think about it. I think I can stay till to-morrow night, and I will hear all you want to say by that time. I think you can decide about these things, so we can take your words to the Great Father; so we can put it in a paper; but I do not know; we will see.

Wolf's Bow. We have been talking to each other a long time. You have said what you have to say. If

you want my land that is over here, (above,) I tell you we will sell it to you. We asked you for fifteen hundred guns of all kinds for the mines; we want them right away in ten days. If you want to build a new agency, go to the foot of the canon on this side of the land we give you. We will go for buffalo, and when we come back we will find the new buildings there. We told the peace commissioners at Laramie we would hold on the white man's hands always. It was put on paper there; we have a copy, and I will show it to you. We said to one another then, we would never point our guns at each other as long as we were Crows. The Sioux fight the whites; they wanted to give us mules and horses to help them fight the whites, but we would not. We have fought the Sioux, and have left many good men on the battle-fields. When I go for buffalo, the Sioux fight me for my land. I will continue to fight them. If the soldiers go to fight my enemy, the Sioux, they do not go far; they turn back close to here. We went to fight them this summer; they were as well armed as we were. We want you to tell the Great Father the Sioux have more guns than they ought to have, and he ought not to give them any more.

MR. BRUNOT. The Great Father does not give them any guns. I am afraid the Sioux get their arms from the same kind of people who give whisky to the River Crows. I got up to say that we have been here a long time. I have talked a great deal, and so have you, and we had better think about it a little. We have some tobacco we want to give you, and we want you all to come to-morrow morning.

After distributing some tobacco the council adjourned.

Third day.

AUGUST 13, 1873.

Council convened at 1 o'clock.

Blackfoot made a long speech to his people, closing up with the request that the commissioner should explain the treaty to them. He said there was nothing in the treaty of what they had said to the commissioners at Fort Laramie, and nothing of what the commissioners had said to them. He said our country is not as large as the commissioners promised it should be, and we do not understand the treaty as you read it. We do not think you will tell us a lie. None of the chiefs would accept this treaty. Show-his-face was the only one who was willing to take a copy of it. We want you to tell us what is in it. None of the Indians who were at Laramie know what is in the treaty.

The council opened with prayer by Dr. Wright.

Mr. Brunot. You would like to know everything that is in the treaty. I will tell you. I do not know whether what is in it is good and pleases the Crows or not, nor does it make any difference whether it pleases me now, or whether I like it or not. All I know, and all the Crows need to know, is that this is the treaty as it was signed at Laramie. Yesterday I told you some of the things I read in it. To-day I will tell you again, because Blackfoot asks me to do so. It reads. "This is a treaty made at Fort Laramie, on the 7th of May, 1868, between the peace commission and the chiefs and head-men of the Crow Tribe of Indians." Article first says, "There shall always be peace between the Crows and the Government. If bad men, the whites or any other people, do wrong to the Crows, they must tell the agent, and the Great Father will have them punished. If bad men among

the Crows kill or harm the white men or take their property, they are to bring them to the agent and have them punished."

BLACKFOOT. Who made this treaty?

MR. BRUNOT. I will read their names: Generals Harney, Sherman, Augur, and others. This copy that Show-his face has was made by Captain Burt at Fort Smith, and it is a copy of the one the peace commission made. The one I have is just the same.

The second article says the United States agrees that this country shall be set apart for the occupation of the Crows and other friendly Indians, whom they wish to have and whom the United States consents shall occupy it. The country begins where the one hundred and seventh degree of longitude crosses the southern boundary of Montana; then up in a straight line to the Yellowstone; then following it till it crosses the southern boundary of Montana; and thence in a straight line east to the place of beginning. This country is for the Crows and the people who are sent to live with the Crows. Then it says after that time the Crows give up all right to any part of the United States except this part embraced in the reservation.

The third article says, because the Crows gave up the other country the United States agrees to build, on Otter Creek, a warehouse, a house for an agent, doctor, carpenter, miller, blacksmith, and engineer, and when the children of the Crows are sent to school, a man shall be sent to teach them; and a school house shall be built; and when it is time to do so, the United States is to build a saw-mill, grist-mill, and shingle-mill.

Article fourth says, the Crows agree, when a house for the agent and other buildings are built, that they will make the reservation their home always, and

they shall not settle anywhere else; but as long as there is peace between the Crows and the whites they may hunt buffalo where there are any and where there are not too many whites.

Article fifth says, the agent shall live among the Crows, and listen to their complaints, and do as the treaty says. If the Crows or the whites do anything wrong, the agent is to send word to the Great Father about it; and what the Great Father decides is right, that the agent shall do.

Article sixth says, if any of the Crows, or any one whom the Government and the Crows allow to live with them, wish to farm, the agent shall help them; and if any Indian selects a piece of land for a farm it shall be entered in a book, and it shall always be his, and he can get a paper from the agent to say that is his. The Great Father may, at any time, survey the land, and mark it out in patches, to show what each one owns. The United States may make laws to show what kind of title the Indian people shall have.

BLACKFOOT. It is all lies; we do not want to hear any more. Wrap it up and throw it all away. We will not have that treaty.

MR. BRUNOT. You had better hear it all and know what you are to get. (At this point there was much excitement among the Indians, many of them declaring they would hear no more. After waiting a few minutes Mr. Brunot insisted upon silence, and said:) You asked me to read the treaty. I am going to tell you all that is in it. It goes on to say that all treaties made before this one are gone, but from the time of this treaty, the United States agree to send to the Crows the following articles: For each male Indian over fourteen years of age, a suit of good woolen clothes; for each woman over twelve years of age a flannel skirt, or goods to make it, some calico,

or twelve yards of cotton domestic; and for the boys and girls younger than fourteen and twelve years, flannel and cotton goods to make each one a suit; and it says, so that the Great Father can send these things, the agent shall each year send word how many Indians there are to get them. This is to be done for thirty years. That is your annuity goods. In addition to this, the Great Father is to send money to the agent to use for the benefit of the Indians at the agency — not to give the money to them, but to spend it for their benefit and make them comfortable and happy. If the Indians do not want the clothing, they are to tell the agent what they do want; and if the Great Father thinks it is good for them he will send them what they want, instead of the clothing, but the agent must send to the Great Father word what they want, and the Great Father must give permission to do so, before any change can be made. For fear some one might not give all their goods to the Indians, some officer must come and see that they get them. The United States agree to send an agent, physician, engineer, blacksmith, carpenter, and farmer, and to pay them while they are here. It says the Crows must have food for four years.

I did not make this treaty. I see that, although the Crows may have made a mistake about the land, the treaty is good for them. The Great Father lives a long way off; he is trying to keep his part of the treaty; but I told you he could not see into the gulches and all these places, and he cannot come from Washington with all the goods that are sent. One man cannot always tell what is being done a great way off, but he wants to do the best he can for you, and wants you to do the best you can for him. You know the goods last year and year before were better than you got before. The reason is, men are trying to get what is right for you. I want you to un-

derstand it and know that there are bad white men, just as there are bad Indians. A bad white man steals your horse; it is not the Great Father, nor is he to blame for it. If a bad Crow takes a horse I do not blame it on Blackfoot; but if a white man takes a Crow horse the agent finds it out and tries to have the man punished. Sometimes he runs away. So it is with the Indians. The chiefs do not want bad Indians to do wrong; neither does the Great Father want bad whites to do wrong to you. Now, we all understand about the treaty, and we will put it away and say nothing more about it.

After you have been thinking about it, you may decide that Judith Basin is a good place to keep always. If you do you can then come here and hunt, just as you do there now. The difference is, now you own this, and hunt and stay over there; but if you sell this, you would own over there, and could come and hunt here. I have talked a long time, but it is your fault, not mine. You asked me to tell you what was in the treaty. When I told you some of it you wanted me to stop. That is not right. If you want to know what is in a man, you want to know all about him; so it is with this paper, and when you have heard it all it is not so bad for the Crows.

BLACKFOOT. We wanted to know just what was in that treaty, and my friend has told us. I have said before that we are friends, and that we like each other; yet we have different thoughts in our hearts. The first time I went to Fort Laramie and met the peace commissioners, what each said to the other, we said "Yes, yes." The second time we went, we signed the treaty; but neither of us, my white friends nor the Indian chiefs, said "Yes, yes," to what is in that treaty. What we said to them, and what they said to us, was "Good." We said "Yes, yes," to it; but it is

not in the treaty. Shane was there the first time, and what he interpreted to us are not the words that are in the treaty. The first time we went, we did not sign the treaty; we only said "Yes, yes," to each other. The Indian way of making a treaty is to light a pipe, and the Indians and their white friends smoke it. When we were in council at Laramie, we asked whether we might eat the buffalo for a long time. They said yes. That is not in the treaty. We told them we wanted a big country. They said we should have it; and that is not in the treaty. They promised us plenty of goods, and food for forty years—plenty for all the Crows to eat; but that is not in the treaty. Listen to what I say. We asked, "Shall we and our children get food for forty years?" They said "Yes;" but it is not that way in the treaty. They told us when we got a good man for agent he should stay with us; but it is not so in the treaty. We asked that the white man's road along Powder River be abandoned, and that the grass be permitted to grow in it. They said "Yes, yes;" but it is not in the treaty. The land that we used to own we do not think of taking pay for. We used to own the land in the Mud River Valley. These old Crows you see here were born there. We owned Horse Creek, the Stinking Water, and Heart's Mountains. Many of these Indians were born there. So we owned the country about Powder River and Tongue River, and many of our young men were born there. So we owned the mouth of Muscleshell, and Crazy Mountain, and Judith Basin; many of our children were born there. So we told the commissioners. They said "Yes, yes;" but there is nothing about it in the treaty. We told them there were many bad Indians, but that we would hold on to the hands of the white man, and would love each other. We told them the Piegans, the Sioux, and other tribes have killed white men. We told them the

whites should not be afraid of them. I asked them to look at us; that we had no arms, and they should not be afraid of the Crows. They said "Yes, yes;" but it is not so written in the treaty. The treaty, you say, has bought all our land, except on this side of the river. And what do we get for it? I am ashamed about it. We sell our land, and what do we get for it? We get a pair of stockings and when we put them on they go to pieces. They get some old shirts, and have them washed, and give them to us; we put them on, and our elbows go right through them. They send us tin kettles; we go to get water to carry to our lodges; we dip the water up, but it all runs out again. That is what we get for our land. Why do they no send us annuity goods; We go to the buffalo country and get skins; our wives dress them, and we give them to our friends. We give more presents to our white friends than all the annuity goods we get are worth. And this is what we get for our lands. What goods are given us are no better than we give the whites, and I do not see what we are getting for our lands. We told the commission at Laramie that the Sioux were in our country on Tongue River. The Sioux and the Crows are at war; yet I went into the Sioux camp alone. They offered to give us two hundred and sixty horses and mules, all taken from white men, if we would join them; but we refused to do so. They took me by the arm, and asked me to stay with them and fight the whites; but I pulled loose from them and would not do so. I told the commission that I was asked to hold the whites with my left hand and the Sioux with my right hand; but now I gave my right hand to the whites, and would hold on to them; they said "Yes, yes." But none of this is in the treaty. We told them we had plenty of fish and game; and when they got scarce we would tell them, and ask help from them.

They said, "Will you sell the Powder River country, Judith Basin, and Wind River country?" I told them no; but that is not in the treaty. When Major Camp came here as agent, we gave him a present of a large number of robes to send to the Great Father. We never heard that the Great Father got those robes; we would like to hear about them. The Crow tribe want Major Pease to remain with us as our agent. Some of the young men want him to take them to see the Great Father at Washington. You ask us to tell you what we want. We want Mexican blankets, elk-teeth, beads, eagle-feathers, and panther and other skins. We like fine horses and needle-guns; these things are to us what money is to you.

MR. BRUNOT. I told you last night I could not stay much longer. I would like to stay a month, and than I might want to stay longer. I would like to stay and talk to you, and hear you talk. Our hearts are close together. You know what I have said is true. Sometimes we know a thing is good, yet we want to keep it away from us; it troubles us. A man has a horse which he likes; somebody offers him something for it that is better; at first he does not want to part with the horse; he thinks of it, and finds he gets something better for it; then he will let it go. Just so about this land. The place on which we were born and raised we think is all the good place there is. Those that were born on Wind River thought that no other place was as good; those who were born down on the Yellowstone thought no place was as good as that. The same men have been here a while; now they think this is better. You have this reservation; you think it a good place to live on; and you go to Judith Basin to hunt. You are right; this is a good place, and you do not like to think about making a change. It belongs to you, and you can do as you please about it. If you listen and do as I want,

I think it is good. If you do not think it is good, I will still say you can do as you please about it. It is like a man who does not want to let his horse go till he thinks about it; when he thinks about it and finds it is better to do so, he lets it go. The man thinks about it till he gets his mind made up. It ought to be the same way about this business. You should think about it and talk about it. Do not put it away out of your mind until you are sure you are going to do right. Do not put it off till you find the commission is gone and all our words are lost. When we come together again you can come and tell us what you think about this business. If you put it off till some other time it may be too late. The treaty says the white men, the Crows, and other Indians can go to Judith Basin. If the Crows wanted to live in Gallatin Valley they could not do it. The white men are there; so, if the white men are in Judith Basin, the Great Father cannot let the Crows live there; it will be too late after the white men are there. The whites are not there now; and before it is too late I would like the Crows to think about it and decide. But do not forget you can do just as you like best. You are men, and can make up your own minds; and what I tell you is because I am your friend, and want you to have good houses and plenty to live on. If a man was to tell me to come and get some of the Crow land for myself, I would want to strike him to the ground. I do not want anything you have, nor do I come to get things for other men. I come because the Great Spirit tells me it is right to do good to the red men. What I say is from the heart, and the time will come when you talk about the matter, and I will take your words to the Great Father. After that I will tell you something in regard to what Blackfoot said about going to Washington. I want to tell you about that after the other things are settled.

BEAR-WOLF. What we say and agree to, we say "Yes, yes," to, on both sides. Blackfoot went to Fort Laramie. They talked with each other; they said "Yes, yes." But when he came back we did not agree to what had been done. We want to go to Washington and see the Great Father. The Chiefs are here, and we want to hold on to our lands. You bring a treaty; it is full of lies. The words that have gone to the Great Father have always been lies. Indians that fight the whites, the whites always do what they want. If you take us to Washingtn we will shake hands with our friends. The Great Father will talk good to us. I want no bad luck on the way. The old men are here; you see them; so are the younger men. It is us who own the land, and we will have our say about it. We want you to give us the means to go to Washington.

The council here adjourned.

Fourth day.

AUGUST 14, 1873.

Owing to the protracted rain no general council was held to-day. The chiefs, however, were gathered in council, containing all the afternoon.

Fifth day.

AUGUST 15, 1873.

Council convened at twelve o'clock. Blackfoot made a long speech to his people being frequently interrupted by the other Indians.

Council opened with prayer by General Whittlesey; after which three hours were given the Indians in which to discuss among themselves the propositions in the articles of agreement.

Council re-assembled at three o'clock.

MR. BRUNOT. When we ceased talking in the council it was raining, and we said we had talked a good while and now it was time to think some and make up our minds. That was what I told you, and the chiefs said it was good to think about it. I told you to make up your minds, and whatever you said, so it should be. If you decided not to sell this place, then we know the Crows do not want to sell it; but I told you what I thought was good for you to do. I asked you to think and see if you could not do that. The next day it rained so much that we did not come together again. I think the rains came so that you would have a longer time to think and decide what you would do. The rain comes on the ground; then the sun comes and makes the ground warm, and makes the grain grow for food for your ponies and the buffalo. So to-day the sun is bright and beautiful; and I hope that the Crows' hearts are good, and that they will decide to do what is good for themselves. Whatever you do I hope it is for a long time and for your good. We talked three days, and now this is the last day to talk, and whatever is done must all be done this evening, so that we may go in the morning. What I said was put in a paper; and if you have decided to go to Judith Basin, we will put our names to the paper, and you will put your names to it, and we will take it to the Great Father at Washington. But if you have decided the other way, we will tear up the paper, shake hands, and be friends all the same. Now we want to know what you have made up your minds to do.

BLACKFOOT. We have been meeting white men before. Whenever we met them we had something to say to them. We met you, and you told us what was written down you would take to the Great Father. We have talked three days, and my tongue is not tired.

Mr. Brunot then explained the provisions of the articles of agreement in a general way, and said: If you wish, the paper will be read; then you can put your names to it or not, as you wish.

BLACKFOOT. On this side of the river and on the other side is our country. If you do not know anything about it, I will tell you about it, for I was raised here. You mark all our country, the streams and mountains, and I would like to tell you about it; and what I say I want you to take to your heart. You make us think a great deal to-day. I am a man, and am talking to you. All the Indian tribes have not strong arms and brave hearts like we have; they are not so brave. We love you and shake hands with you, (taking Mr. Brunot's hand.) We have gone to Judith Basin a great deal, and you wish us to take it for a reservation. All kinds of men go there; trappers and hunters go there poisoning game. The Sioux Indians, Crees, Santees, Mandans, Assineboines, Gros Ventres, Piegans, Pen d'Oreilles, Flatheads, the Mountain Crows, the River Crows, Bannacks, Snakes, and Nez Perce' Indians and white people, all go there. You wish us to take the Judith Basin for a reservation. All these Indians will come, and we will likely quarrel; that is what we think about it. Judith Basin is a small basin; a great many people go there; we all go there to eat buffalo. I have told you about the Sioux when they come to fight us. We go a long way from our camp. All Indians are not as strong as we are; they give up and run off. If you have two dogs, if they go to fight, and you catch them and pull apart, when you let them go they fight again. So it is with the Sioux and Crows. You tell me the railroad is coming up the Yellowstone. If you move this place away from here, the Sioux will be like a whirlwind; they will come and fight the whites; that is true as I tell you. Along Prior Mountain is the Crow trail. We

listen to you, and what I tell you is true. The young men do not care what they do. We want some of them to go to Washington with Major Pease, and what they say there will be all right. I will tell you what we will do; neither of us will live forever; in time both of us will die. We will sell the part of our reservation containing the mountains from Clark's Fork, below the mountains, and the valleys we will not sell. The Crow young men will go to Washington and fix it up, and come back and tell us about it. We will sell the range of mountains to Heart's Mountain and Clark's Fork. They young men will sell it at Washington, and they will say to the Great Father at Washington, that the Crows have a strong heart and are willing to sell their land. When you buy this and give us plenty for it, we will talk about the rest, if you want to buy it. Those mountains are full of mines. The whites think we don't know about the mines, but we do. We will sell you a big country, all the mountains. Now tell us what you are going to give for our mountains. We want plenty for them. Am I talking right? The young men think I am talking right. Every one here is trying to get plenty. The railroad is coming. It is not here yet. You talk about Judith Basin. I have heard about it. I want to see what you will give for the mountains; then we will talk about the rest of our land. You think you have peace with the Sioux; I do not think you have. You want to shake hands with them. We want to know whether you are going to fight the Sioux or not; we want to know. We will see what the young men will do at Washington; if they hear what is good, we will do it. The railroad will not be here for some time, and before that we will be part of the time on this side and part of the time on the other side of the river. In the Gallatin Valley, if you sell a house and a little piece of

ground, you get paid for it. I know that is the white man's way of doing. The white men are all around us. On the other side of the river all those streams belong to the Crows. When the Sioux come there, we can run them off into the river. We are friends; when our friends get horses stolen, we give them some. Many of our horses are stolen here; four of my horses are gone now; last night some horses were stolen. The Sioux took them along the mountains. On the other side of the gap, there are plenty of houses full of everything. In Gallatin Valley are plenty of cartridges; the Crows have none. If the Sioux come, I do not know what we shall fight them with. See all these old women! They have no clothing; the young men have no good blankets. We would like the Nez Perce's, when they raise camp, to come here; they die with the Crows; they help to fight the Sioux. The last commission told us we could eat buffalo a long time. While we are here, the Flathead Indians take our horses. I would like you to take our part and stop them.

MR. BRUNOT. We talked about the horses this morning with Major Pease; he is going to send and get them; and the troops will take the horses if they find where they are, and they will bring them back.

BLACKFOOT. We did not know you had talked about it. We would like you to say "yes" to what we said. At Laramie we said, yes! but not to what is in the treaty.

MR. BRUNOT. Tell Blackfoot every man is not like every other man. I was listening, and I heard all he said, and it went into my heart. If a man hears something that makes him sorry, he looks sorry; if he thinks he is going to hear what is good, and he does not hear it, he looks sorry. I heard all he said; and when he got through, it was time for me to say

something. Somebody took some horses. I heard it, and talked with Major Pease, and he is going to send for them; he is going to send to Fort Shaw, and if they find the horses, they will ask the soldiers to get them back. You have an agent to look after such things, and he does the best he can. So, Major Pease is going to try and get them back. They have one of our horses, too; I guess you did not know that. (This seemed to amuse them very much.) Now we will talk about the treaty; it is far more important that a few horses. The paper that we have made about Judith's Basin, I think we had better read; then you will know what I think is good for you. Then I will tell you what I think of your proposition. The miners were at Emigrant Gulch long ago; some are on Clark's Fork. The Great Father knows that; he could send the soldiers and made them go away, but suppose he should do that, what would happen? Some of these men would get mad at the Crows about it, and would do something wrong; and perhaps they would get others to help them, and perhaps the Crows would go after them, and somebody might get killed; perhaps a white man, perhaps an Indian. If somebody got hurt, his friends would want revenge; soon we would be quarreling. I do not want it to be so, nor does the Great Father want it. The Great Father says he does not want the Indians' land taken, nor does he want trouble; so he sends us to see whether you will take money for what the white men are doing; and find a place for the Crows where there is no gold for people to run after. If Blackfoot has a good American horse, and I have a horse that is not so good, I come and say we will trade, and he will say I do not want to trade; he thinks about it and says, "my horse is better and you must give me something more;" if I say, "I will give you something more," then we make the trade.

So with this country; I say to you, you have a big country, and some of these people are on it; you like the country; I show you another country; you go to it; you like it; I say if you like that country, go there, and let the white people have this country, and we will give you so much. You get all the annuity goods and all that is in the other treaty, but you get them at Judith Basin instead of here. You live in this country now and hunt over there; if you listen to me, you will live over there and come here and hunt as much as you please." Then, every year as long as you and your children live, you have money from the Great Father to buy what you want. Every year the Great Father asks the agent what do the Crows want this year? The agent asks the Crows and the Great Father sends the things; that is the way it is in the paper. That is how it will be, if we all say, "yes," and put our names to the paper. The reason why I do not think Blackfoot's proposition is good, is this: if the Crows keep the valley and sell the mountain, the whites will want all the time to go through your country; your horses will not be safe. If you want wood it is nearly all in the mountain. You sell even the water-courses with them; it would not be good to sell that and keep this; do you not see that? The white men in the mountains would be glad if I agreed to what you propose. If I cared only for them, I might agree to it, but I care for the Indians and cannot agree to it. I do not think that would be good for any of us, for trouble might come. If you cut off all above Clark's Fork, I would carry the proposition to the Great Father, and he would give money for it, but I do not think that would be so good as to sell this place and take the other; you would not get as much for it. Blackfoot asked me about the Sioux; some of them live on the Platte and on the Missouri; they are holding the

white man's hand, and they do not come up to fight the Crows, but there are some who are not holding the white man's hand. But the Great Father has sent his troops, and two boats have come to the mouth of Powder River and the soldiers are building a warhouse there. They are there now; you will soon hear of their being there. In regard to going to Washington, I have something to tell you about it, but it is best not to talk of that until we have settled about the land. I think some of you ought to go to see the Great Father, and I want some of you to go, and I want you to come and see me at the same time. You will see the other gentlemen who are here, and you will have a nice time and be much pleased. You can tell the Great Father what we say "yes" to, with your own mouths. I want Major Pease to go with you. All I am afraid of is when you come back, all the Crows will want to go. Now I want you to take a vote and see whether you will agree to what we offer. The sun is going down, and what we do must be done soon. If you agree to what we offer, I will go away glad, for I think it is good. I have seen you a week, and I like you, and I want nothing but good for you, and I will always think of you, and will think for your good, I will do all I can for you, and whatever is right for the Great Father to send you, I will ask him to send; these gentlemen think the same. The Crows want some horses; we will ask the Great Father to send you some, but we will not put it in the paper, for the paper is for all time. The horses would be soon gone; but what is in the paper for you to get lasts always; you get them every year. I will read what is in the paper.

The articles of convention were then read as follows:

Articles of convention made and concluded on the

16th day of August, in the year of our Lord one thousand eight hundred and seventy-three, at the Crow agency, in the Territory of Montana, by and between Felix R. Brunot, E. Whittlesey, James Wright, commissioners in be-half of the United States, and the chiefs, head-men, and men representing the tribe of Crow Indians, and constituting a majority of the adult male Indians belonging to said tribe.

Whereas a treaty was made and concluded at Fort Laramie, Dakota Territory, on the seventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight, by and between commissioners on the part of the United States, and the chiefs and head-men of and representing the Crow Indians, they being duly authorized to act in the premises;

And whereas by an act of Congress, approved March 3, 1873, it is provided: "That the Secretary of the Interior be, and he is hereby authorized to negotiate with the chiefs and head-men of the Crow tribe of Indians, in the Territory of Montana, for the surrender of their reservation in said Territory, or of such part thereof as may be consistent with the welfare of said Indians: *Provided*, That any such negotiations shall leave the remainder of said reservation in compact form, and in good locality for farming purposes, having within it a sufficiency of good land for farming and a sufficiency for water and timber, and if there is upon said reservation a locality where fishing could be valuable to the Indians, to include the same if practicable; and the Secretary shall report his action, in pursuance of this act of Congress, at the next session thereof, for its confirmation or rejection;"

And whereas, in pursuance of said act of Congress, commissioners were appointed by the Secretary of the Interior to conduct the negotiations therein contemplated, the said commissioners on the part of the United States, and the chiefs, head-men, and men consituting a majority of the adult males of the Crow tribe of Indians, in behalf of their tribe, do solemnly make and enter into the following agreement, subject to the confirmation or rejection of the Congress of the United States, at the next session thereof.

ARTICLE 1. The United States agree that the following district of country, to wit: commencing at a point on the Missouri River opposite to the mouth of Shankin Creek; thence up said Creek to its head, and thence along the summit of the divide between the waters of Arrow and Judith Rivers, and the waters entering the Missouri River, to a point opposite to the divide between the head-waters of the Judith River and the waters of the Muscle-Shell River; thence along said divide to the Snowy Mountains, and along the summit of the said Snowy Mountains in a northeasterly direction, to a point nearest to the divide between the waters which run easterly to the Muscle-Shell River and the waters running to the Judith River; thence northwardly along said divide to the divide between the head-waters of Armell's Creek and the head-waters of Dog River, and along said divide to the Missouri River; thence up the middle of said River to the place of beginning — the said boundaries being intended to include all the country drained by the Judith River, Arrow River, and Dog River — shall be and the same is set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; and the United States

now solemnly agree that no persons except those herein designated and authorized so to do, and except such officers, agents, and employees of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians; and the United States agree to erect the agency and other buildings, and execute all the stipulations of the treaty of Fort Laramie (the said stipulations being hereby re-affirmed) within the limits herein described, in lieu of upon the south side of the Yellowstone River.

ART. 2. The United States agree to set apart the sum of one million of dollars, and to hold the same in trust for the sole use and benefit of the Crow tribe of Indians, the principal to be held in perpetuity, and the interest thereof to be expended or re-invested, at the discretion of the President of the United States, annually, for the benefit of said tribe.

ART. 3. It is mutually agreed between the United States and the Crow Indians, that the second article of the treaty made at Fort Laramie between the commissioners of the United States and the Crow tribe of Indians be, and the same is, abrogated by this agreement, and the said Indians cede to the United States all their right, and title, and claim, to the tract of country described in the said second article, to wit: "Commencing where the 107th degree of longitude west of Greenwich crosses the south boundary of Montana Territory; thence north along said 107th meridian to the mid-channel of the Yellowstone River; thence up said mid-channel of the Yellowstone to the point where it crosses the said southern boundary of Montana, being the 45th degree of north latitude; and thence east along said

parallel of latitude to the place of beginning," and which is conveyed to them therein, except the right to hunt upon said lands so long as they may remain unoccupied, and as game may be found thereon, and peace continues between the whites and Indians.

ART. 4. The United States agree to suppress, so far as possible, by the imposition of pains and penalities, the practice of wolfing, of killing game by means of poison, within the limits of the following district of country, viz: beginning at the mouth of the Muscle-Shell River; thence up the said river to the North Fork, and up the North Fork to its source; thence northward along the summit of the Little Belt and Highwood Mountains to the head of Deep Creek; thence down said creek to the Missouri River, and along the margin of said river to the place of beginning.

It is expressly understood between the commissioners and the Indians, parties thereto, that this agreement is subject to the ratification or rejection of the Congress of the United States at its next session, and that, pending the action of Congress, the United States shall prevent all further encroachments upon the present reservation of the Crow tribe.

The articles were carefully explained until they were fully understood by the Indians.

THIN BELLY. I say let them have the land.

LONG HORSE. We will give you this land for what you say. This side of the river belongs to us; we will sell it. These are our chiefs. We have waited for Iron Bull and Blackfoot to say they will sell the land; they don't say so, but the young men now say to sell it. I am going to come here to hunt. Do not let wolfers come here. These young men are chiefs and want to go to Washington to see the Great Father;

let them go.

IRON BULL. Take the names of those who will sell; they will not touch the pen to sign the paper; they think it is bad luck; they will come up and say "yes," "yes."

BLACKFOOT. We smoke together; we talk through the pipe. As I told you, we are friends. The young men say they will sell and we agree to it. We want all on the other side of the river away up to Judith Basin. It is a small country.

MR. BRUNOT. The Great Father sent me; and I do what he says if I think it is good for those I am talking to. What I thought was good I put in the paper.

BLACKFOOT. You ought not to give the Sioux guns and ammunition; you should wipe them all out; you should throw a bad disease on them.

MR. BRUNOT. The Great Father did not tell me to talk about the Sioux. I have told you what is in this paper. Now we want all who agree to this to come and say "yes," so that after it is all over, nobody can say it is the fault of somebody else. I will put my mane to it and I will never be afraid to say that I think this is good for the Crows. If you don't want to agree to this paper you will say so, and there will be none of it. I want all of you to say "yes," and then we will know it is all right. We will call the names and if you don't want to say "yes," don't say it. If more say "yes" than say "no," it is good.

MANY INDIANS. It is too small a country in the Judith Basin. We want from the Yellowstone to the Missouri.

OLD CROW. If we take Judith Basin we can shoot from one line of our country to the other line.

IRON BULL. We want to move over there, but we want all the otherside of the river; that is what we

want, and we tell you so.

MR. BRUNOT. I don't say "yes." I want to talk to the young men. You say you want all the country the other side of the river; that is a bigger country than this. If I would give it, I would have to say, "What will you give for the difference?" Some people will talk that way. Most of the country over the river white people cannot live on, and never will live on. Why did I not put that in with the Judith Basin? That would make your land as big as this. If I went to the Great Father and said, "I gave the Crows all the other side of the river for this," he would say, "Why did you do that?" If I said "I promised to give the Crows, every year, food and clothing besides," he would say, "That will not do." It is no use to tell him that. But if I say, "I gave the Crows a smaller piece of land and they give you a bigger piece of land, you must give them goods every year," he will say, "That is all right." If I put in the bad land, that will make it as big as this reservation, and it would do you no good except to hunt on, and you can hunt there anyhow.

BLACKFOOT. The Crow country is a big country, and we will give it for the country on the other side of the river. What I tell you is good for both sides; and we want, besides, what you told us you would give us. This is our country, and what we give is worth more than all the other side of the river. You want to give us a little hole; we want a big country; you gave the Sioux a big country, and the Crows are a big tribe and want a big country. While Blackfoot was speaking a woman came forward to speak.

THE ONE WHO GOES RIGHT STRAIGHT ALONG. I am a woman and ought not to speak in council, but I want to speak of the first council on Horse Creek. My brother went to the States and

never came back. You want to give us a little territory, and we don't want it. The whites killed my brother, for he never came back, and you never paid me anything for him. Another time we were on the Little Horn; we lived in a big grass lodge, and a white man poisoned my other brother, and he died. You bought our land before, and gave us kettles that would not hold water. We want all the other side of the river from the mouth of the Yellowstone. I want my son to have a big country; you offered us a little country and I don't want it.

OLD CROW. Tongue River, Rosebud, Powder River, and Big Horn are full of wood. In Judith Basin is no wood for a camp.

MR. BRUNOT. I am afraid some one has been talking to you who is not a Crow, and you have his ideas. If I were a Nez Perce', I might say to you do not take Judith Basin; if I were a Blackfoot, I would say do not take it; if I were a Wolfer, I would say do not take Jidith Basin; and what is the reason? All these people can now go in there; if it belonged to the Crows, they could not. May be some of this kind of people have been talking to you; if any of these people advise you not to take it, you can see the reason. I told you the second day why I wanted you to have Judith Basin. Now, I tell you according to the treaty, the white men, the Wolfers, and other Indian tribes can go there the same as the Crows. These men are going in there, more and more of them every day. If you put off, for a year or two, getting it, so many whites will be there, that you can not get it. That was one reason I was desirous you should have it now. It is not a big country; I know that is a small country. The time was when all the country from the Missouri River to the mountains had no white people; now there are a great many. Blackfoot

spoke about the Sioux; there were a great many Sioux; they roamed on the plains, on the Platte, and the Republican, as they pleased. They went and fought the Utes, they went as far as they pleased. The Kiowas and Comanches were all over that country once. The whites said they were going to make a railroad, and all these Indians said as a few Sioux do now, they would not have it. If you go down there now you will see not one railroad only, but many railroads, and when your young men go to Washington, they will go ten times as fast as a horse can go. That railroad was made; the Sioux could not stop it; what could they do? They could go to the white man's cabin, where he slept, and kill him, but they do not go there to do it now, and the reason was they did not take the white man's hand then; the Great Father sent them away to the barren lands on the Arkansas, and the Sioux will be pushed I do not know where. The Great Father does not want to serve his friends so. The Great Spirit tells us we are of one blood, and must do what is good for the red men who hold our hands, as we would for our children, and that is the way I feel to the Crows. And that is why I come here. Now I have come and said what I think is right. I have given the Great Father's message. The Great Father wants to save trouble. He is willing to pay you for the mountains the white people have been going into. I told you there was a good place where you can stay forever, and it is a good place for you to go to. I have told you how the buffalo have left other countries and how they will go from this. When the buffalo is gone, if you stay here till then, you can only live on a piece of this country. You can only hunt on the other side as long as there are any buffalo. Your ponies can range on the Yellowstone, and they can range up to the Judith, but you cannot cover it all over with your

villages; because your lodges don't cover it all over is no reason why you cannot hunt on it. This place is your home; it does not keep you from hunting where you please. If you take Judith Basin for your home, it is the same thing, only that is your home. You know that is a better place than this to stay both summer and winter; you stay there now longer than anywhere else. If your agency was there it would be better and you could come to this country to hunt. You say you want all the other side of the river for your reservation; that is not what the Great Father tells me to say. I cannot give you that, because the Great Father will say the paper is not good. I thought you had made up your minds to say yes to what we offered, but you say you want something else. I have said All I have to say about the proposition. We offer land, and we offer money every year for food and for the goods you need. I am going away, and that is the end of it now. But I will always think about the Crows as friends, and I hope whatever you do will be good for you. I do not know that I will ever see you again. You will remember my words, and some day you will know what I said was good for you, and all I said was true. I want some of the chiefs to go and see the Great Father. Suppose I was to die as I go to the Great Father; nobody would think the Crows killed me. Because there was a Crow man went a long way and died on his way home, that is not because the white men did bad; it was because they gave him so many good things to eat; but these young men must not eat so much. Now we will shake hands and stop the council, and it is all over, but we are better friends than when we first saw each other. But if the chiefs want to come yet and agree to the paper, they can come.

BEAR-WOLF. We want you to hold on a while. I want to go with peace and see the Great Father and

talk with him. We want to go and see how it is. You claim all on the other side of the river and give us a small piece of land. We want to go and see about it; we want Bravo and Shirley and Major Pease to go with us. We offer to give you a big country and a rich country; we love our Great Father, that is why we offer to give it to him. You want to give us a little country where there are no mines.

The council here adjourned. After the council, Iron Bull, Long Horse, and Thin Belly are three of the principal chiefs, Blackfoot being the only principal chief not expressing a willingness to agree to it.

Sixth day.

AUGUST 16, 1873.

In the morning all the chiefs and young head-men came and expressed a desire to sign the agreement.

MR. BRUNOT, after ascertaining that they fully understood it, said: You wish to tell me that you agree to the exchange for Judith Basin, as it is in the paper.

ALL THE CHIEFS. Yes; we all agree to it.

MR. BRUNOT. I want you all to come, one at a time, and say "yes." Bring all the others, and they will say "yes;" that is enough.

IRON BULL. If all the chiefs say "yes," that is enough.

MR. BRUNOT. It is better the others should say so too.

They then came forward, one at a time, and said "yes." In signing, all expressed the wish that they might be permitted to eat buffalo as long as there was any; others asked that they should have horses; others asked for guns; and many asked that Agent Pease should be retained. To all of these the explanation was fully given that the paper did not

promise any of these things; but they were told that when they went to see the Great Father they could talk to him about giving them what they wanted.

All who were present, being all the chiefs and headmen, (except one,) came forward, and, fully understanding the articles of convention, assented to them, each saying "yes."

At twelve o'clock we left the agency for Bozeman.

Respectfully submitted,

THOMAS K. CREE,
Secretary.

To the Special Crow Commission.

* * * *

CROW TRIBE EXHIBIT NO. 75

The Children of the Long Tailed bird are called Crow Indians by the white man. They call themselves Absaroga or Absaloga—but the white man finds it easier to say Absaroka.

However it is said, the name belongs to a people proud of their heritage. *Always tribal elders have been keepers of the* tribal history.

One such man was Old Coyote, warrior, chief and historian, who was one of a group of wise far-sighted men who guided their people during the painful

transition from the life of the plains to the life of the reservation.

Old Coyote was probably *born about 1857,* before anybody started keeping records. As a youth he was called Wolf Comes Up, for his mother saw a wolf on the crest of a hill shortly after he was born.

His adult name was conferred on him by Chief Mountain after he was wounded in a battle with the Blackfeet not far from Hardin, in what is known as the Corinth area.

Old Coyote was a member of the Lumpwood Warrior Society and the Ties the Bundle Clan—the clan recognized for having the most chiefs in that day among the Crows. He took a leading part, too, in the rites of the sacred Tobacco Society, and carried the pipe on many a war party. He was a companion and co-worker with Plenty Coups, Medicine Crow and others who are better known.

Old Coyote, a scout for General Crook, was wounded in the Battle of the Rosebud. A handwritted statement made in 1908 certifies to this and also says his wound kept Old Coyote from doing manual labor from that time on.

This did not prevent Old Coyote from owning a few head of stock in the Pryor area, or from attending the councils of his people and giving them his advice and leadership. Nor did it prevent him from becoming foremost among the Crow historians in his generation.

The family moved to St. Xavier. Here others who kept the verbal history of the people used to come to

smoke with him and go over the old stories. Old Coyote also kept in his mind the war songs of fighters among his people.

He died on April 29, 1934. His family believes he was about 77 years old.

By that time he had passed much of his lore on to his oldest son, Barney Old Coyote, Sr., and to his oldest grandson, Henry Old Coyote, who spent countless hours at the feet of his grandfather.

Henry Old Coyote operates a ranch at St. Xavier and also is Crow Tribal coordinator.

He has taken the part of Sitting Bull in Custer's Last Stand ever since the show's first production in 1964.

He has an outstanding war record. He volunteered for service in the Air Force, and was decorated 10 times. He earned the Air Medal for meritorious achievement and nine oak leaf clusters in his three and half years in the service. He was overseas for 15 months.

Mr. Old Coyote is stepping into his grandfather's moccasins as a keeper of the Crow stories and traditions. He not only recalls the stories, he has taped many of them from the old men of the tribe, and is translating them from his native tongue into English.

Following is a part of the Crow Indian heritage, as Old Coyote told it to his grandson, Henry.

The mountains were called Big Horn for the sheep that lived there. And as the Absaroga (Crow Indians) moved from place to place long ago, they sometimes hunted the sheep for novelty or variety in their diet.

And now one time a woman of the tribe lost her husband in battle just before the birth of their son and so she married another man. This new stepfather pretended he loved the boy and took the boy hunting, let him ride the best horse, and carry the meat back to camp. If others were near, the stepfather would proudly say, "Later on, this little man will be the main provider!"

But these were not his real feelings. The truth was that the stepfather did not like the boy and sought a way to get rid of him.

The people moved about until they came to the area of Muddy Springs. Buffalo were plenty so the Head Chief called the men, "Come over and let's smoke together. There are no enemies near. This is a good place to camp. The womenfolk can work on the hides they are tanning."

It was decided. The Head Chief announced to the people, "We are not going to move for a day or so. Anyone wanting to get game, plan on it. You are free to do so."

And then the stepfather told his wife, "I will take the boy and hunt big horn sheep instead of buffalo. I have hunted big horn sheep before. I know just where they are located."

No one else was going after big horn and thus the stage was set for events that followed. It was as if some unseen force caused the stepfather to do this.

When last seen by the people of the camp, the stepfather and the boy were headed in the direction of Hol-in-the-Rock along the upper edge of the steep red wall of the mighty canyon. When they arrived in the area of Hole-in-the-Rock, the stepfather kept looking down into the canyon. Finally he got off his horse, walked to the edge.

"There are some big horn sheep down there.

Come, get down and look."

The boy got off his horse, walked to the edge and looked, but he could not see the sheep.

"Lean over a little farther and you will see them."

The boy leaned over. And then the stepfather pushed him over the edge. As the boy fell from sight, the stepfather took the boy's horse and left.

After dark, the stepfather returned to camp without the horse and told the mother he had sent the boy home earlier. The frightened mother went to the Head Chief and sought help to look for the boy.

The Chief announced the loss and requested all good men to help. For four days they searched and found nothing.

The bereaved mother went to the edge of the camp and cried. And then she prayed, appealing to all of the great powers that she wanted to see her son again.

Since neither boy nor horse was found, the Chiefs reasoned that he had been captured. But he was such an age, he knew he was Crow and he would return when he could. The sad mother cut her hair as the Crows did when they believed a loved one was dead and wore the clothes of mourning.

And then the camp moved. . . . .

When the stepfather pushed the boy, the boy didn't fall all the way to the river bottom. An outcrop of cedar along the steep wall grew in such a way that the boy fell into its branches. It was strong enough, so he straddled it and looked around. There was the steep red wall above him and if he dropped, he'd be crushed on the giant rocks below. There was nothing to do but to shed tears.

On the morning of the fourth day, when the camp of his people moved, he was there in the trees. As

day became a little light, he heard voices.

One was the voice of a girl. The boy in the tree could tell that she addressed a boy because of the name she used, One-That-Is-Able To-Run-Along-The-Side-of-a-Sharp-Incline. When the other voice answered it was that of a boy. He addresed the voice that was a girl and called her Big-Horn-Sheep-Woman. So the boy in the tree heard the girl saying, "There's a poor creature up there. Do you see it? There's a poor creature that is helpless, a pitiful creature in distress."

The boy sheep said, "Yes, I see him but what can we do?"

The girl said, "why don't we go back and tell the rest of them and see what they can do."

The boy heard the sound of hoves as they went along the canyon wall. He could tell by the sound of rocks tumbling down that the boy and girl sheep moved away from him. After a while he heard sounds at the bottom of the canyon. He sensed a lot of activity but the sounds were far away and hazy. Then he heard someone announcing. "There's a poor one up on the side of the canyon with no one to help him. I'm calling upon the strong ones who are sure of themselves, the most able among you."

"I am named White Horn. You all know me. I'm calling on you. I'm older than you, my horns are weatherbeaten and white and worn from age. I'm old and gray and have seen many years. I am wise. This is why I am calling you all together. Your strength and skill are needed at this time. You who are greatest, the time has arrived for you to show courage and ability to help. Come forward and help the helpless one."

After the boy in the tree heard the announcement, the boy and girl sheep came back up. The girl asked

the boy sheep, "Shall we tell him now?"

The boy sheep answered, "He will find out soon enough."

The girl said, "I'm going to tell him anyway." She addressed the boy in the tree, "Older brother, the most able ones of our kind are on their way to give you help.

The boy sheep was running along the canyon walls, pretending to have a good time, but letting the boy in the tree know he had company now, keeping his spirits up. The girl said. "Cease crying, older brother. They're going to help you now."

The sun was not yet up, but the day grew brighter. And then the boy in the tree heard hooves beating on the rocks, coming upward. The sheep arrived and gathered around and the boy looked down. There were some big ones there. One that looked like a leader was talking to the rest.

"All right, we'll try. Now we know all of you are sure of yourselves, but I'm going to call on four, including myself. Big Horn Ram, I select you. You try first. Next I'll call on Big Horn Sheep. Then on Never Slips. And I will follow up."

Quickly, Big Horn Ram was alongside the boy in the tree. "My child, I have come to help you. But you must do as I say. I want you to grab my horns and drop onto my back and close your eyes."

The boy knew if he let go of the cedar, he might fall. If he didn't do as told, he might die there. He had no choice. So he did as he was told. He grabbed Big Horn Ram's horns and fell from the cedar. Hanging on, he put his face down and pressed it against the neck of the ram and closed his eyes.

All of the sheep sensed his feelings. One-With-White-Face encouraged the frightened boy, "My child, don't be afraid. Do as you're told if you want

to get out of here alive."

Now the boy could feel the ram leaping ahead, jumping many times straight up the canyon walls. The boy was not a good rider in such a place. With the burden on his back, Big Horn Ram soon played out. Then he said to Big Horn Sheep, "Come to my assistance. Your help is needed now."

So Big Horn Sheep pulled alongside and said to the boy, "Now you must change to my back and do the same as you were instructed before."

Then Sure-Footed-One came along, and finally the last ram. After the boy got on and closed his eyes, he felt the mighty ram leaping upward. Finally the ram gave a great lunge. Then the boy could feel the ram walking quietly. The big ram said, "My child, you can open your eyes now. You're up on top."

When the boy opened his eyes, these four lay on the ground panting. Then the Old Wise One with white face and horns told the boy, "After your fathers get their wind back, they will tell you things."

Then the sheep came back. The boy noticed that the last ram who had carried him had horns and hooves of glistening metal. That ram said, "My name is Big Metal. Right now I give you that name."

Then he ordered White Face and Horns to announce to all the animals and birds to gather around. After they were gathered, Big Metal said, "I have already given you my name, my child. I am Chief of the Big Horns in these mountains. I give you my name and whatever powers it takes to be a Chief. You will accomplish many things. You will become a Chief of all Chiefs."

He spoke to the different animals and birds, "You in the animal kingdom have possessed all sorts of

powers but you didn't come to the aid of this boy in distress. You didn't show your powers. I, Big Metal, have brought your child to safety. After I have talked to him and the rest of my kind are through telling him what they have to tell, it's up to the rest of you to give him something—whatever you wish, if you want to."

There were seven sheep, Big Metal, Never Slips, Big Horn Sheep, White Horn, Ram Sits Down, Cupped Hooves, and Big Horn Ram.

Each in turn gave the boy something, some power that each himself possessed—wisdom, sharp eyes, sure footedness, keen ears, great strength, strong heart.

And then they said, "We seven rule these Big Horn Mountains. That river down there in the bottom is the Big Horn River. Whatever you do, don't change its name. It shall be known at the Big Horn River. If you ever change the name of the river there will be no more Absaroga. The Absaroga will be nothing.

Then Big Metal addressed the other animals and birds. "Now it's up to you if you have anything to give or to tell our child."

So different animals and birds came up and gave the boy the right to practice their powers by calling upon them. All the animals and birds took him as their child, Big Metal.

When they had finished, they said, "We have given you powers that are greater than any of the others to whom power have been given before. You now have the right to tease all people, to break their taboos, their strengths, for your powers are the greatest."

"We have given you everything for a good life, everything that makes a wise leader. What the Absaroga consider good will now come your way

without effort on your part."

And then they told him, "When you go home, your stepfather will be the surprised one. Don't be afraid to tell your people what happened, what we've told you. When you first go into your mother's lodge, throw this sinew into the fire. Your uncles and fathers here will take care of your stepfather for you. Don't do anything to him yourself. Just throw the sinew into the fire in your mother's lodge and leave the rest to us."

And they told him he would be a prophet for his people. Big Metal told him he would be Chief and nothing on earth could cause him death until he outlived four generations, that he would be a good provider, a good leader, a chief.

"Now, before you go, we have one more thing to tell you. This man here (addressing the badger), whenever he decides, he doesn't want to be moved, he sticks his claws into the ground and it's pretty hard to budge him. He has something to tell you."

So the badger told him, "The earth is my support, my shelter, my defense, my weapons, my everything. When you go home, build a sweat lodge. As you do so, dig a hole in the ground, put hot rocks in, pour water on. Mention my name, the badger, and your father's name Big Metal. Call upon us in seeking aid. Call upon me, the ground, the earth, the Badger. Whenever you are in a bad situation, someone is trying to crowd you out, mention your father's name and my name. I will stick my claws into the ground for you. When you talk to that earth, all of your fathers and I will hear you."

"Now, my child, go back to your people. Even this morning, they were still looking for you. They will camp tonight not far. Go now. If you start running, you will find your camp. Already you have great

power, sharp eyes, keen ears, strong legs. Tell you people anytime they get hungry they can come through this area. Even if you just think about us, you will happen onto game. If you merely think about these rams, game will be plentiful and you will come across it."

So they told him, "Go back!"

He caught up with the camp and went to his mother's lodge. He went inside. Just as he came inside he threw the sinew into the fire. The stepfather, as he saw the boy, grabbed his blanket and went out the door.

Upon seeing her boy, the mother cried out loud in surprise and joy. She had thought him dead. She had mourned. Her son was back.

He told his story to the people. At first after the boy told them his stepfather pushed him off the cliff, the warriors were ready to go. But upon hearing the rest of the story they decided to let the elements and forces out there take care of the stepfather.

And then the boy instructed the others how to build the sweat lodge according to the directions badger had given. He told them of the Big Horn sheep and that if the name of the mountains or the river were changed, the Absaroga would be no more.

After his return, the Absaroga moved camp many times. And then in the spring of the year, when snow patches were still left, the camp moved back to the same general area. On the ground they discovered some fragments of clothing by which they recognized the dead stepfather. They noticed that he was bent backward like a bow. As sinew in fire curls, so the stepfather's own loin had drawn up and he was twisted backward. Among the people, the stepfather had relatives who put him away. Then they left the place and forgot him.

From then on Big Metal had a normal boyhood. When he became a young man people saw that he had unusual powers—keen eyes, a fine sense of humor, a sharp mind. He was physically very active and strong, everything the Absaroga desire in a young man. He became a good warrior. He often warned his people if enemy war parties approached. When he went on a war party, he would predict what he would do—get horses, kill enemies, or whatever. And he could tell people where to go to get game. Often his powers were tested and they were strong. He broke many taboos.

The prediction that he would outlive four generations is believed to have come true. Before he died he told the people he wanted to be buried next to the Big Horn River. His fathers, the sheep, would come for him. When his people called upon badger and the animals in his name, those ones would come to their aid.

One day he wrapped his blanket around himself and lay down. . . .

THE BIG HORN LAKE

The Big Horn Mountains kept their name, but a part of the waters of the Big Horn have recently been in danger of losing their identity.

Last year, Yellowtail Dam, which impounded the waters of that river, was dedicated. During the construction period, and even as the waters rose along the walls of the Big Horn Canyon, the white man began calling the resulting lake Yellowtail Reservoir, and it was so designated in Washington.

Yellowtail is a name honored among the Crows, and they were content for the dam to bear it—but

not so the waters of the river. At their insistence, the name Big Horn Lake is now gaining acceptance.

The Crows may well find a part of their future along the mountains that edge the beautiful Big Horn Lake. They have been named master concessionairs for the Big Horn Canyon National Recreation Area, and will cooperate with the National Park Service in its development.

Already, the Crow people have built the Oke-A-Beh boat launching ramp, only a short distance upstream from the dam, and have the funds for a highway to it. That all-weather road will be constructed this summer. Nearby, on Pretty Eagle point, the tribe hopes one day to build a lodge and restaurant, along with other recreation facilities. The site is one of unmatched grandeur, for guests will be able to look down into the Big Horn Canyon with its vertical walls of rock, and into Black Canyon, which branches away to the east, its hillsides clad in deep green fir, pine and spruce trees.

The recreation area will offer opportunities for individuals to operate such things as bait and tackle shops, filling stations, souvenir and craft shops, and all the other businesses that cater to the travelling public.

So it is that the glistening metal which composed the horns and hooves of the sheep, Big Metal, may one day become gold in the hands of the Crows—a tribe which looks to the past for tradition, and to the future for progress for its people.

FISH AND GAME EXHIBIT NO. 5

Crow Indian Agency
Crow Agency, Montana
April 30, 1952

Otto Wesley Bear Ground
Tribal Game Warden
Pryor, Montana

Dear Sir:

The State trout fishing season will open on May 19th for this part of Montana according to recent releases by the State Fish and Game Commission. In order to avoid the confusion which arose last year, I want to again call your attention to the fact that your authority and responsibility is to protect the Tribal areas on the Reservation from fishing by non-Indians. You should confine your activities to that job.

You do not have authority to stop fishing by non-Indians on allotted lands. The owners of the land have that authority and if they desire to post their land against trespassing they have that privilege. It is not your responsibility to patrol allotted lands.

There will be no sale of permits by the Tribe to fish or hunt on the Reservation. The Secretary of Interior has never approved the request tht Tribe made over a year (six years) ago to authorize the Tribe that privilege and at a meeting a short time ago the Tribal Council revoked that request. This also means, of course, that there will be no permits issued to hunt or fish on Tribal land by non-Indians.

Last year I was given to understand certain Game Wardens had issued permits for hunting and fishing. You do not have that authority and this must not be repeated this year.

To repeat: 1. Your duties as Tribal Game Wardens are to protect the Tribal lands from hunting and fishing by non-Indians. 2. Your authority does not extend to the allotted land on the Reser-

vation. 3. No permits can be issued by any Tribal Game Warden or anyone else for hunting or fishing anywhere on the Reservation. 4. If an individual wishes to post his land to protect it from trespassing, he is lawfully within his rights to do so.

Sincerely,

L. C. Lippert
Superintendent

LCL:EBS
CC: Mr. Powers
Mr. Robert Yellowtail, Sr.
Mr. Perry Howe

FISH AND GAME EXHIBIT NO. 9

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

P.O. Box 1538
Billings, Montana

August 15, 1960

Memorandum

To: Area Director, Indian Affairs, Billings, Montana Attention: Law and Order

From: Field Solicitor

Subject: Act of July 12, 1960 (P.L. 86-634, 74 Stat. 869, 18 U.S.C. 1165)—Hunting, Trapping or Fishing on Indian Lands

In our discussions of August 2, certain questions were raised concerning the application of the subject Act. We were agreed that many of these questions would require Departmental or judicial deter-

minations. We were also agreed that certain of these questions would need tentative answers at this time, subject, of course, to more authoritative determinations at the Denver and Washington levels.

Your memorandum of August 3 set our certain of these questions upon which a preliminary opinion was believed to be immediately required. These questions are set our, below with the comments of this office following each question. The comments are based on the usual rules of statutory interpretation; on the material set out in House Report No. 625 (86th Congr., 1st Seas.) and in Senate Report No. 1686 (86th Congr., 2nd Sess.); and on the principles set out in *Williams* v. *Lee*, 358 U.S. 217.

QUESTION A1—Section 1165 provides that "Whoever, without lawful authority or permission...." Would the term "whoever" also include tribal members in so far as authority or permission being obtained to hunt or fish on the allotted lands of another tribal member?

COMMENT A1—Yes. Some question may later be raised as to whether an individual Indian may thus be deprived of any treaty right to hunt and fish on an Indian reservation. But for the present, I believe we must assume that the history and language of the statute indicates a purpose to cover both Indians and non-Indians.

QUESTION A2—Can a tribal council or executive board issue lawful authority to hunt or fish on an individual Indian allotment?

COMMENT A2—Yes, provided the Indian allottee does not take affirmative action to exclude hunters or fishermen with tribal permits. Affirmative action would be by posting his allotment or by personally opposing the entry of such hunters or fishermen. I

think their conclusion is warranted by the legislative purpose of providing tribal revenues. If a hunter or fisherman were required to have a license and tribal permit and also a written permit from the allottee, the licensing effort should discourage hunters and fishermen and tribal revenues from permits would not result.

I think the history of this legislation also indicates that the Congress was providing a hunting and fishing climate similar to that in non-Indian country, where a permit is required of the sovereign but where an individual landowner can only exclude a hunter or fisherman if he takes certain affirmative action.

QUESTION A3—Must lawful authority be in written form?

COMMENT A3—Both the cited House and Senate Documents indicate that the consent must be in the form of a license or permit for which a fee can be charged.

QUESTION A4—If verbal permission is considered lawful authority, must it be obtained from each heir, in instances where two or more heirs hold inheritance rights to allotted land? If written permission is required for this same inherited land, must it be signed by all heirs?

COMMENT A4—The permission of one heir, whether oral or in writing, would doubtless preclude successful prosecution of a hunter or fisherman who has such permission. See also Comment A2.

QUESTION A5—Can an individual Indian allottee issue permission and authority to a non-Indian to hunt or fish on his own allotment, even though the reservation may be closed by order of the Tribal Council or Executive Board?

COMMENT A5—No. It is believed that Congress

intended a situation similar to that on non-Indian land where the sovereign could prohibit all fishing and hunting.

QUESTION A6—Can an Indian land owner give lawful authority and permission to an Indian or a non-Indian to hunt upon his allotment which is under lease to another individual? Would the lessee or permittee have authority to post this leased land? Would the lessee or permittee have authority to protect his crop or livestock by refusing to allow seemingly careless and reckless sportsmen from entering his leased premises or would he be compelled to wait until damage has been done? If damage to crop or livestock occurred, who would be responsible, the sportsman or the lessor who gave him lawful authority to enter the premises.

COMMENT A6—This depends on the lease. Normally such permission could be given, but see Comment A2.

QUESTION A7—Who has authority to issue permission on Government lands reserved for use of Indians.

COMMENT A7—The Superintendent could prohibit hunting or fishing on Government lands reserved for Indian use; but if he did not, such hunting or fishing would appear permissable under a tribal permit.

QUESTION B1—Section 1165 provides that "Whoever without lawful authority or permission, *willfully* and *knowingly* goes upon any land that belongs to any *Indian* or *Indian tribe*. . . ." Must all land be posted? If so, must the posting be of legal ways and means, such as signs placed at regular intervals and of certain dimensions? What constitutes legal posting?

COMMENT B1—As indicated in Comment A2, I believe allotments must be posted if hunters or fishermen with tribal permits are to be excluded. But hunters or fishermen who do not have tribal permits should need no such warning. They should be assumed to know the legal boundaries of the Indian reservation. Nevertheless, good administration would dictate the posting of a prominent sign at each entry point of an Indian reservation. The sign should indicate that the Indian reservation here begins and that hunting and fishing without a tribal permit is forbidden. The character of the posting for allotted lands on which the allottee proposes to prohibit hunting and fishing might well follow the state statutory requirements for posting non-Indian lands.

QUESTION B2—To constitute a crime there must be unity of the act and the intent. An individual fishing or hunting on Indian land without permission would be committing an illegal act under 1165, but if such land were not posted, would the prosecution be able to prove intent? Would defendat's statement that he was not *knowingly* aware of the statue of the land be ground for not guilty plea.

COMMENT B2—The man who hunts or fishes on Indian land without a permit might, of course, plead that he did not know he was on Indian land. We will then have a question as to whether knowledge can be inputed to him by reason of certain signs which he should have seen, oral warnings which he should have respected, or the existence of legal boundaries. See also Comment B1.

QUESTION B3—Section 216 of U.S.C.A. having been repealed, by this act does Federal jurisdiction cease on fee or deeded lands within the exterior boundaries of an Indian reservation, that is with respect to hunting and fishing?

COMMENT B3--Prosecution under Section 1165 would not appear warranted for hunting or fishing on fee or deeded land.

QUESTION B4—Would tribal game wardens employed and salaried by the tribe have jurisdiction for enforcement of this Federal law, or would it be the responsibility of the special officers of the Bureau of Indian Affairs?

COMMENT B4—Bureau of Indian Affairs officers would have initial responsibility for enforcement of Section 1165. Tribal game wardens should be deputized, if possible. If they are not deputized, a citizen's arrest might be sustainable but could cause difficulty. In most cases, however, the tribal game warden's warning should be sufficient to assure compliance with the hunting and fishing prohibitions in Section 1165.

You have also asked whether a tribal ordinance implementing Section 1165 should be approved by the Secretary under 25 CFR 11, since non-Indians will be affected. Such approval is believed necessary.

(Signed) A.E. Bielefeld
A. E. Bielefeld
Field Solicitor, Billings

FISH AND GAME EXHIBIT NO. 23
UNITED STATES 15
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

P. O. Box 1538
Billings, Montana 59103

February 16, 1966

Memorandum

To: Area Director, Indian Affairs, Billings, Montana
Attention: Economic Development

Your memorandum of February 10, 1966 indicates that a resolution of the subject question is important to your planning of development areas on the Crow Indian Reservation, and would have significance on the Wind River Indian Reservation in Wyoming.

In *Crow Tribe of Indians* v. *United States*, Civil No. 214 (1963) D.C. Montana, Billings Division, it was held that the Big Horn River was a navigable water.

In *United States* v. *Holt State Bank* (1925) 270 U.S. 49, it was held that the State owned the bed of navigable waters wtihin the Red Lake Indian Reservation in Minnesota. This finding was made notwithstanding *Minnesota* v. *Hitchcock* (1901) 185 U.S. 373, where the integrity of the Red Lake Indian Reservation was affirmed and the State denied a claim to school sections within the Reservation. Emphasis in *Holt* was laid on the fact that Congress, in the Act of Admission (11 Stat. 166) declared that navigable waters "shall be common highways and forever free." In Section 12 of the Act of March 3, 1811 (2 Stat. 662, 666) Congress had used much the same language with respect to all navigable waters within the Louisiana Purchase.

The impact of *Holt* was considerably reduced in *Moore* v. *United States*, 9th Cir. 1946, 157 F.2d 760, where the court affirmed Indian ownership of the bed of a navigable water. The court emphasized that the Quillayute treaty provided for a reservation sufficient for the wants of the Indians who as early as 1888 had whaling, seal and salmon enterprises under way. The court distinguished *Holt* on the ground that no evidence was there adduced as to "the use

of the navigable waters with reference to established industries of the Indians."

Recently, however, the rule of *Holt* was revitalized when District Judge William J. Jameson, sitting on the 9th Circuit Court of Appeals relied on *Holt* to deny Indian rights to tidelands. *Skokomish Indian Tribes* v. *France*, 320 F.2d 205, 213; *cert. denied* (1905) 376 U.S. 543. Judge Jameson distinguished *Moore* on the grounds that the Skokomish Indians had not shown that the tidelands were essential to their livelihood.

It would be ingenuous, of course, to suggest that a single rule will determine whether the bed of a navigable water within an Indian reservation belongs to the State or to the Tribe. The language and purpose of the treaty setting up the Indian reservation, the wants and industries of the Indians and their established use of the navigable water will all have some bearing on the determination of ownership. In other words, the equities are important.

One thing indicated by the cited cases, and particularly *Skokomish*, is that the courts do not favor a dog-in-the-manger position. Where there are two claimants to a property, the one who can or does best use it may very possibly prevail.

In these circumstances, I believe a well-supported program to develop the resources of the Big Horn River would do much to bulwark the Crows' claim of title to the bed of the river. A do-nothing attitude would suggest that such resources are not important to the needs or advancement of the Tribe.

The fact has not been overlooked that a Tribal right to the bed of the stream would probably be challenged in any enforcement of Public Law 89-634 (18 U.S.C. 1165; 74 Stat. 469), which makes it a

crime to fish without permission on Indian tribal or allotted lands. Considerations to be weighed in the assertion of a tribal right to control fishing on navigable waters are set out in my memorandum to you, dated January 18, 1961, on the subject, "Public Law 86/634, Boundary Bill as it applies to the south half of Flathead Lake," copy of which is attached.

With respect to tribal control of fishing on the Wind River Reservation, I believe we may properly say that the question of title to the river bed is not present. The court's determination as to the navigability of the Big Horn River in *Crow Tribe of Indians* was addressed to proof and argument relating to the stretch of the Big Horn River below the Wind River Reservation. No claim was made as to the navigability of the Big Horn within the Wind River Reservation. If the river within the Wind River Reservation is not navigable, the bed of the stream would normally be owned by the abutting owners, who, in such case, would be primarily the Wind River Tribes.

A. E. Bielefeld
Field Solicitor, Billings

In duplicate

Enclosure (in duplicate)

FISH AND GAME EXHIBIT NO. 32
STATE OF MONTANA
DEPARTMENT OF FISH AND GAME
HELENA, MONTANA

OFFICE MEMORANDUM

To: Frank Dunkle Date: February 11, 1969

From: Fletcher Newby

Subject: Draft of Big Horn River Management Plan.

Enclosed are our suggestions for a management plan for the Big Horn River, including access acquisition and development and fisheries management.

FEN/af

cc: Art Whitney
Wes Woodgard

/s/ Fletch

BIG HORN RIVER MANAGEMENT PLAN

Introduction

Construction of Yellowtail Dam has increased the outdoor recreation potential of the general area significantly. National recognition has come through the creation of the Bighorn Canyon National Recreation Area. The National Recreation Area includes the reservoir, the take area and some adjacent lands, the afterbay and only approximately 900 feet of the Big Horn River below the afterbay. Water quality in the Big Horn River has improved substantially following the closure of Yellowtail Dam, primarily because of the removal of silt. In addition there has been an improvement in the temperature regimen, with summer temperatures cooler and winter temperatures warmer. The Montana Fish and Game Department stocked rainbow trout in the reservoir, the afterbay, and in the river immediately below the afterbay. Growth response in the clear, fertile waters of the river has been dramatic and has produced a splendid rainbow trout fishery.

The only legal public access to the Big Horn River is through the approximately 900 feet of river below

the afterbay, now included in the Bighorn Canyon National Recreation Area. This was the downstream boundary of the take area for construction of the afterbay. The Big Horn River has been decreed by the courts a navigable stream. As a result, the state has a valid claim to the bed of the river and to public access below the high water flow line. These claims are largely without practical effect however, without legal public access from the high water flow lines to the public highway system. An aggressive program for access acquisition and development is needed to provide for public enjoyment of this important resource.

Recreation Access Plan

Acquisition

The immediate goal should be recreation access points every 10 miles or approximately a day's float apart. The distance involved is about 37 miles, making three or four access sites necessary. The ultimate goal should be an access every 5 miles or approximately one-half day's float apart for a total of seven or eight evenly spaced access sites the most desirable arrangement.

Acquisition and development priorities would fall into three distinct areas. First priority goes to the reach of river between the afterbay dam and St. Xavier, a distance of approximately 15 miles. There are nine patented tracts containing approximately 5 miles of frontage within this area.

Second priority goes to the reach between St. Xavier and Two Leggins Dam, a distance of approximately 13 miles. There are six or seven patented tracts comtaining about 5 miles of frontage within this area.

Third priority centers on the portion of the river

from Two Leggins Dam to the mouth of the Little Big Horn River, a distance of approximately 9 river miles. There are seven or eight patented tracts containing about 6 miles of frontage in this area. It is recognized that the availability of land will greatly affect actual acquisition, but these priorities should be followed as closely as is practical and possible.

Development

Developments on the acquired recreation access areas will be associated with, and compared with, the National Recreation Area. For this reason it is recommended that developments follow the standards ds set for state recreation areas; not the usual fishing access standards. The Big Horn River is fully navigable and it would be entirely appropriate to use water-based monies in the development of these areas.

Big Horn River Fish Management Plan

The Big Horn River, below the afterbay dam, can be divided into two sections as far as the fishery is concerned. The portion of the afterbay dam to the south of the Little Big Horn River can be classed as a trout stream, with the upper 15 to 20 miles of a quality that could classify as "blue ribbon." The section below the mouth of the Little Big Horn River is more of a sauger-channel catfish fishery, with burbot, acme walleye and brown trout also caught.

The excellent rainbow trout fishery that has developed in the upper portion of the Big Horn River is due to stocking each year since 1966, of 10,000 rainbow trout fingerlings below the afterbay dam plus the addition of rainbows stocked in the afterbay reservoir and Yellowtail Reservoir proper. It is known that during the flood period of the spring of 1967 that a considerable number of fish passed

through these dams as evidenced by the considerable number of walleyes caught in the river below. Walleye had been planted only in the main reservoir.

A very limited amount of recruitment from natural reproduction is anticipated because of the small size and limited number of suitable spawning streams for trout. It is not anticipated that any substantial spawning will occur in the Big Horn River because of the cementing in place of the streambed gravel caused by the many years of heavy sediment load prior to the construction of Yellowtail Dam. This is based on inspection of the gravels below Boysan Dam on the Wind River or Big Horn after 11 years of operation. Wyoming fisheries personnel have seen no evidence of natural reproduction in the river below Boysen Dam.

Future management of the Big Horn River calls for continued annual stocking with 10,000 fingerling rainbow.

Marking experiments along with population sampling work will be carried on to determine the success of these plants, as well as the contribution from natural spawning. Methods used will be the electric shocker and creel census.

Age and growth work combined with bottom samples and stomach analysis will enable us to follow the condition of the game species involved.

Monitoring of the temperature regimen and flow patterns in the stream will be continued.

C' emical analysis, along with bottom samples and possible plankton samples, will enable us to monitor the fertility in the stream. To date, rainbow and brown trout up to eight pounds have been caught in the river along with numerous trout in the three pound class. All trout caught are in excellent con-

dition, indicating high fertility.

Adjustments can be made in the stocking program as future studies indicate and as access areas are acquired. This stream shows promise of developing into one of the top trout streams in the state.

FISH AND GAME EXHIBIT NO. 40

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

P. O. Box 1538
Billings, Montana 59103

September 8, 1972

Mr. Don Wright
State Fish and Game Department
Mitchell Building
Helena, Montana 59601

Dear Mr. Wright:

My letter of September 5, 1972 related briefly to the question of the state's jurisdiction over non-Indians who violate state law while on an Indian reservation. Since writing, I have noted the more authoritative and extended discussion of the problem in our Solicitor's opinion appearing in 78 I.D. 101, copy of which is attached.

Sincerely,

/s/ A. E. Bielefeld
Field Solicitor, Billings

Enclosure

cc:
Area Director, Indian Affairs, Billings—Attn: Glen Jackson & L&O Superintendent, Blackfeet Indian

Agency (w/cy enc. to each)

CRIMINAL JURISDICTION OF UTAH OVER NON-INDIANS HUNTING ON THE UINTAH AND OURAY RESERVATION IN VIOLATION OF STATE LAW

March 29, 1971

CRIMINAL JURISDICTION OF UTAH OVER NON-INDIANS HUNTING ON THE UINTAH AND OURAY RESERVATION IN VIOLATION OF STATE LAW

State Laws—Indian Lands: Generally—Indian Tribes: Generally

Utah game laws apply to non-Indians who hunt, even with the tribe's permission, on the Uintah and Ouray Indian Reservation. Thus, non-Indians cannot hunt on the reservation without procuring a state license, even though they may be licensed by the tribe to do so.

M—36813 March 28, 1971

TO: COMMISSIONER OF INDIAN AFFAIRS

SUBJECT: ELK—UTE TRIBE, UINTAH AND OURAY RESERVATION, UTAH

We have received your request for our advice concerning the Ute Tribe's right to allow nonresidents of Utah to hunt elk on the Uintah and Ouray Reservation. You indicate there were elk on the original Uncompahgre Reservation established prior to Utah's admission to statehood. In addition, the Ute Tribe recently obtained 100 elk from a herd at Yellowstone National Park, paying for their tran-

sportation and release on the reservation. We understand that the elk from Yellowstone were allowed to resume their wild state and were not kept in enclosures or attempted to be tamed or domesticated. They are, therefore, to be regarded the same as other wild elk for purposes of this opinion.

The tribe has apparently cooperated with state officials in establishing an elk season for Utah residents in return for Utah's assistance in the cropping of these elk. However, Utah has not been willing to work with the Utes in granting nonresidents of Utah the privilege of taking elk on the reservation. If these nonresidents cannot hunt elk on the reservation, the tribe will be deprived of a substantial source of income. You indicate your belief that the tribe owns the elk on the reservation and has the right to allow nonresidents of Utah to hunt them whether or not Utah grants the nonresident hunters permission.

Your statement of April 11, 1968, 82 Stat. 78, 25 U.S.C. Sec. 1321(b), to support the proposition that the Indians have authority to control, license, or regulate hunting, trapping and fishing on their reservation. This provision applies only to states which have assumed some measure of jurisdiction over Indian reservations under this act. Since Utah has not assumed any such jurisdiction, 25 U.S.C. sec. 1321(b) is not germane. Moreover, we do not believe this section *gives* tribes authority, exclusive or otherwise, to control non-Indian hunting and fishing on a reservation; it merely *preserves* whatever powers individual tribes may have in states which have been given or have assumed civil or criminal jurisdiction under the act.

While we do not agree with your statement that the elk on the reservation are the property of the Ute

Tribe, we concede there is some legal authority to support the proposition of tribal ownership of the fish and wildlife on a reservation. *Mason* v. *Sams*, 5 F.2d 255 (W.D. Wash. 1925); *Pioneer Packing Co.* v. *Winslow*, 294 P. 557 (Wash. 1930). However, these cases involved one tribe, the Quinaults, and were concerned with the interpretation of a treaty. Whatever the present validity of these two cases as applied to the Quinaults' or other Indians' rights to fish in the State of Washington, we do not consider them to be controlling, or even persuasive, legal authority in the situation considered here.

Even a state does not hold possessory title to the wildlife within its jurisdiction, but rather holds them in trust for the benefit of the people. *Geer* v. *Connecticut*, 161 U.S. 519 (1896); SOLICITOR'S OPINION, 71 I.D. 469, 476 (1964). If the tribe had captured and confined these elk, the argument in favor of tribal ownership would be stronger. However, there can be no individual property in fish and game so long as they remain wild, unconfined, and in a state of nature. 35 Am. Jur. 2d *Fish and Game* sec. 2 (1967). Title to the game in its natural habitat belongs to the first person who lawfully reduces it to possession. *Geer v. Connecticut, supra;* 4 Am. Jur. 2d *Animals* sec. 5 (1962).

We note in passing that Utah has a statute indicating that all game not held in private ownership legally acquired belongs to the state. 3 Utah Code Ann. sec. 23-1-10 (1969). However, it has been held that statutes like these are concerned only with the state's power of regulation, leaving the landowner's interest what it is. *McKee* v. *Gratz*, 260 U.S. 127, 135 (1922); Solicitor's Opinion, *supra.*

Since the states do not "own" the wild game within their borders, we do not see how an Indian

tribe can hold title to the game within its reservation unless one argues that tribal soverignty is a kind of sovereignty superior to that of states or the national government, and we consider this implausible. Therefore, we believe that an Indian tribe does not have title to the fish swimming or wildlife running free within its reservation, but does have the right to capture such game, after which time possessory title rests in the tribe.

Utah requires all persons to obtain a hunting license before taking any game. 3 Utah Code Ann. sec. 23-1-12 (1969). This provision also applies to Indians who are wards of the Federal Government when outside an Indian reservation. 3 Utah Code Ann. sec. 23-1-8 (1969). Utah also has a statute prohibiting any person from shipping game out of the state without having a valid license or permit attached to it. 3 Utah Code Ann. sec. 23-10-4 (1969). The question thus becomes whether Utah can enforce these statutes against non-Indians hunting elk on the Uintah and Ouray Reservation.

Without question, the tribe has authority to require non-Indians to secure reservation hunting and fishing permits and observe tribal conservation rules while on the reservation. SOLICITOR'S OPINION, 58 I.D. 331, 333, 346 (1943). It is also well settled that state game laws do not apply to Indians on trust lands within the Indian reservation. SOLICITOR'S OPINION, 54 I.D. 517, 520 (1934); *In re Blackbird*, 109 F. 139 (W.D. Wis. 1901); *In re Lincoln*, 129 F. 247 (N.D. Cal. 1904); *United States* v.

Hamilton, 233 F. 685 (W.D. N.Y. 1915).[1]

However, it must be remembered that Indian country is not regarded as an area of exclusive Federal jurisdiction, but is politically and governmentally a part of the state in which state laws apply to the extent that they do not conflict with Federal Indian law. *Federal Indian Law* (1958) 510, 513-514; *Surplus Trading Co.* v. *Cook*, 281 U.S. 647, 650-651 (1930). It is also well settled that offenses committed by a non-Indian against a non-Indian in the Indian country are punishable by the state. *United States* v. *McBratney*, 104 U.S. 621 (1881); *Draper* v. *United States*, 164 U.S. 240 (1896); *New York ex rel. Ray* v. *Martin*, 326 U.S. 496 (1946).

It seems apparent that a tribe's immunity from state hunting and fishing regulations is peculiarly Indian in nature and that a tribe cannot license the immunity to a non-Indian. SOLICITOR'S OPINION, 62 I.D. 186, 194 (1955); Hobbs, *Indian Hunting and Fishing Rights II*, 37 Geo. Wash. L. Rev. 1251 11267 (1969). The right is one exercised by members in common with other members of the tribe. 62 I.D. 186, 194 (1955); see *Montana Power Co.* v. *Rochester*, 127 F.2d 189, 192 (9th Cir. 1942).

There is authority which indicates that a non-Indian hunting on the reservation has no immunity from state regulations. *State of Montana ex rel. Nepstad* v. *danielson*, 427 P.2d 689 (Mont. 1967); *Ex parte Crosby*, 140 Pac. 989 (Nev. 1915); see *United States* v. *Sturgeon et al.*, 27 Fed. cas. 1357 (no.

[1]There is a split of authority of the applicability of state conservation regulations to an Indian on non-Indian land within the reservation. *State* v. *McClure*, 268 P.2d 629 (Mont. 1934) (no): *State* v. *Johnson*, 249 N.W. 284 (Wis. 1933) (yes). However, today, an attempt to enforce state conservation regulations against Indians in this situation would most likely be considered an interference with reservation self-government. *Williams* v. *Lee*, 358 U.S. 217 (1959).

16,413) (D. Nev. 1879).[2] In addition, various Attorneys General have taken the position that a state has jurisdiction over non-Indians who violate state game laws while on an Indian reservation. 1950-1952 Opinions of the Attorney General of Nevada p. 20; 1953-1954 Report of the Attorney General of New Mexico p. 511; 1960-1962 Opinions of the Attorney General of Oregon p. 11.

In the *Danielson* case, *supra*, a non-Indian killed two elk on the Crow Reservation in violation of Montana law. The Supreme Court of Montana stated at page 692:

* * *we conclude that the State of Montana has jurisdiction to enforce its fish and game regulations on Indian reservations contained within its boundaries with respect to persons who are not tribal Indians unless precluded from doing so by an act of Congress or unless such enforcement would interfere with self-government on the reservation.

In conclusion, we believe there is ample authority indicating that non-Indians are subject to state game laws while on an Indian reservation. Of course, Utah may not choose to prosecute nonresident non-Indians who may hunt on the Ute Reservation in

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[2]It is interesting to look at the legislative history of the act of July *12, 1960, 74 Stat. 469, 13 U.S.C.*§§1164, 1165 (1964), which made it unlawful to destroy boundary markers and to trespass on Indian reservations to hunt or fish. In a letter from the Assistant Secretary of the Interior to the Chairman of the House Committee on the Judiciary dated February 13, 1958, recommending passage of this bill, the Assistant Secretary said: "*While non-Indians are subject to State laws when they go on Indian Reservations, many of the States do not have criminal trespass laws, and in other states the Indians find it impossible to comply with the requirements of State laws designed to control trespass.*" (*Italics* added). H. R. Rep. No. 1686, 86th Cong. 2d Sess. 4 (1960). See also 68 IAM 4.6.2 E(1)(c), which indicates that non-Indians who have received tribal consent to hunt or fish are also subject to state and federal law.

violation of the state law. If Utah decides to exercise jurisdiction over these non-Indians, however, we believe the state has both the power and the right to do so.

MITCHELL MELICH,
Solicitor.

FISH AND GAME EXHIBIT NO. 53

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington 25, D.C.

Through: Area Director, Billings, Mont.

Chairman

Crow Tribal Council

Dear Mr. Chairman:

On August 24, the Crow Tribal Council enacted Resolution No. 149 concerning the regulation of hunting and fishing on the Crow Reservation. The resolution states that hunting and fishing within the boundaries of the reservation have been reserved by treaty for the exclusive benefit of the Crow Indians. It provides that hunting for game birds or game animals or fishing on any land within the Crow Reservation by other than members of the Crow Tribe and their spouses shall be unlawful except with a tribal permit. It also provides that a penalty of not less than $25 nor more than $300, or a sentence of imprisonment for a term of three months shall be imposed for violation of the resolution. The resolution would affect non-Indians and non-member Indians.

We have been unable to substantiate the provision

that hunting and fishing on the Crow reservation have been reserved exclusively to tribal members by a treaty with the United States. The treaty of May 7, 1868 (15 Stat. 649; 2 Kapp. 775), by which the reservation was created, provides, in Article 4, that the Indians shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts. The treaty makes no reservation of exclusive rights to the Indians to hunt and fish within the reservation. We have found no other treaty, agreement with the Indians ratified by law, or Federal statute subsequent to the 1868 treaty that affords such exclusive rights.

There is a considerable area of fee-patented land within the reservation owned by non-Indians. We are not aware of any judicial decision that an Indian tribe has the power and authority to prohibit non-Indians owning land within a reservation from hunting or fishing on such land, particularly in the absence of a clearly established exclusive right in the Indians.

Aside from the foregoing, however, the resolution appears to be fatally defective. It purports to subject non-Indians to criminal sanctions imposed by tribal authority. An Indian tribe has no criminal jurisdiction over non-Indians. See Cohen, Handbook of Federal Indian Law, p. 148. The Assistant Secretary of the Interior, in a letter dated June 4, 1954, to the Director of the Minneapolis Area Office of this Bureau, stated as follows: "Section 1 (a) of Article VI of the tribal constitution empowers the Lac du Flambeau Tribal Council to enact ordinances for the protection of fish and game but neither that nor any other provision of the constitution confers jurisdic-

tion on the tribe to enforce criminal sanctions against non-members of the tribe. The ordinance, therefore, is ineffective because its intent is beyond the constitutional power of the tribe." In addition, the court in which the criminal sanctions would be enforced is the Court of Indian Offenses maintained under Departmental regulations, 25 CFR, and that court has jurisdiction only over offenses committed by Indians. (See 25 CFR 1612, and our memorandum of August 30, 1954, a copy of which is enclosed with our letter regarding Ordinance No. 3.) Because Resolution No. 149 is beyond the power of the tribe and is therefore ineffective, we can not approve it. No purpose would be served by its disapproval by the Secretary of the Interior since it is already a nullity.

Sincerely yours,

Commissioner

cc: Branch of Land Operations
Branch of Tribal Programs
Billings Area Office
Crow Agency

FISH AND GAME EXHIBIT NO. 67

A TREATY OF PERPETUAL FRIENDSHIP, CESSION AND LIMITS,

Entered into by John H. Eaton and John Coffee, for and in behalf of the Government of the United States, and the Mingoes, Chiefs, Captains and Warriors of the Choctaw Nation, begun and held at Dancing Rabbit Creek, on the fifteenth of September, in the year eighteen hundred and thirty.

WHEREAS the General Assembly of the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation of these laws; Now therefore that the Choctaw may live under their own laws in peace with the United States and the State of Mississippi they have determined to sell their lands east of the Mississippi and have accordingly agreed to the following articles of treaty:*

ARTICLE I. Perpetual peace and friendship is pledged and agreed upon by and between the United States and the Mingoes, Chiefs, and Warriors of the Choctaw Nation of Red People; and that this may be considered the Treaty existing between the parties all other Treaties heretofore existing and inconsistent with the provisions of this are hereby declared null and void.

ARTICLE II. The United States under a grant specially to be made by the President of the U.S. shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source (sec. source) of the Canadian fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the Treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present

*This paragraph was not ratified.

Treaty shall be ratified.

ARTICLE III. In consideration of the provisions contained in the several articles of this Treaty, the Choctaw nation of Indians consent and hereby cede to the United States, the entire country they own and possess, east of the Mississippi River; and they agree to remove beyond the Mississippi River, early as practicable, and will so arrange their removal, that as many as possible of their people not exceeding one half of the whole number, shall depart during the falls of 1831 and 1832; the residue to follow during the succeeding fall of 1833; a better opportunity in this manner will be afforded the Government, to extend to them the facilities and comforts which it is desirable should be extended in conveying them to their new homes.

ARTICLE IV. The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of Red People the jurisduction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State; but the U.S. shall forever secure said Choctaw Nation from, and against, all laws except such as from time to time may be enacted in their own National Councils, not inconsistent with the Constitution, Treaties, and Laws of the United States; and except such as may, and which have been enacted by Congress, to the extent that Congress under the Constitution are required to exercise a legislation over Indian Affairs. But the Choctaws, should this Treaty be ratified, express a wish that Congress may grant to the Choctaws the right of

punishing by their own laws, any white man who shall come into their nation, and infringe any of their national regulations.

ARTICLE V. The United States are obliged to protect the Choctaws from domestic strife and from foreign enemies on the same principles that the citizens of the United States are protected, so that whatever would be a legal demand upon the U.S. for defence or for wrongs committed by an enemy, on a citizen of the U.S. shall be equally binding in favour of the Choctaws, and in all cases where the Choctaws shall be called upon by a legally authorized officer of the U.S. to fight an enemy, such Choctaw shall receive the pay and other emoluments, which citizens of the U.S. receive in such cases, provided, no war shall be undertaken or prosecuted by said Choctaw Nation but by declaration made in full Council, and to be approved by the U.S. unless it be in self defence against an open rebellion or against an enemy marching into their country, in which cases they shall defend, until the U.S. are advised thereof.

ARTICLE VI. Should a Choctaw or any party of Choctaws commit acts of violence upon the person or property of a citizen of the U.S. or join any war party against any neighbouring tribe of Indians, without the authority in the preceding article; and except to oppose an actual or threatened invasion or rebellion, such person so offending shall be delivered up to an officer of the U.S. if in the power of the Choctaw Nation, that such offender may be punished as may be provided in such cases, by the laws of the U.S.; but if such offender is not within the control of the Choctaw Nation, then said Choctaw Nation shall not be held responsible for the injury done by said offender.

ARTICLE VII. All acts of violence committed

upon persons and property of the people of the Choctaw Nation either by citizens of the U.S. or neighbouring Tribes of Red People, shall be reffered to some authorized Agent by him to be reffered to the President of the U.S. who shall examine into such cases and see that every possible degree of justice is done to said Indian party of the Choctaw Nation.

ARTICLE VIII. Offenders against the laws of the U.S. or any individual State shall be apprehended and delivered to any duly authorized person where such offender may be found in the Choctaw country, having fled from any part of U.S but in all such cases application must be made to the Agent or Chiefs and the expense of his apprehension and delivery provided for and paid by the U. States.

ARTICLE IX. Any citizen of the U.S. who may be ordered from the Nation by the Agent and constituted authorities of the Nation and refusing to obey or return into the Nation without the consent of the aforesaid persons, shall be subject to such pains and penalties as may be provided by the laws of the U.S. in such cases. Citizens of the U.S. travelling peaceably under the authority of the laws of the U.S. shall be under the care and protection of the nation.

ARTICLE X. No person shall expose goods or other article for sale as a trader, without a written permit from the constituted authorities of the Nation, or authority of the laws of the Congress of the U.S. under penalty of forfeiting the Articles, and the constituted authorities of the Nation shall grant no license except to such persons as reside in the Nation and are answerable to the laws of the Nation. The U.S. shall be particularly obliged to assist to prevent ardent spirits from being introduced into the Nation.

ARTICLE XI. Navigable streams shall be free to

the Choctaws who shall pay no higher toll or duty than citizens of the U.S. It is agreed further that the U.S. shall establish one or more Post Offices in said Nation, and may establish such military post roads, and posts, as they may consider necessary.

ARTICLE XII. All intruders shall be removed from the Choctaw Nation and kept without it. Private property to be always respected and on no occasion taken for public purposes without just compensation being made therefor to the rightfull owner. If an Indian unlawfully take or steal any property from a white man a citizen of the U.S. the offender shall be punished. And if a white man unlawfully take or steal any thing from an Indian, the property shall be restored and the offender punished. It is further agreed that when a Choctaw shall be given up to be tried for any offence against the laws of the U.S. if unable to employ counsel to defend him, the U.S. will do it, that his trial may be fair and impartial.

ARTICLE XIII. It is consented that a qualified Agent shall be appointed for the Choctaws every four years, unless sooner removed by the President; and he shall be removed on petition of the constituted authorities of the Nation, the President being satisfied there is sufficient cause shown. The Agent shall fix his residence convenient to the great body of the people; and in the selection of an Agent immediately after the ratification of this Treaty, the wishes of the Choctaw Nation on the subject shall be entitled to great respect.

ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so, by signifying his intention to the Agent within six months from the ratification of this Treaty, and he or she shall

thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under 10 years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this Treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the priviledge of a Choctaw citizen but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

ARTICLE XV. To each of the Chiefs in the Choctaw Nation (to wit)Greenwood Laflore; Nutackachie, to Mushulatubbe, who as he had an annunity of one hunfour sections of land, two of which shall include and adjoin their present improvement, and the other two located where they please but on unoccupied unimproved lands, such sections shall be bounded by sectional lines, and with the consent of the President they may sell the same. Also to the three principal Chiefs and to their successors in office there shall be paid two hundred and fifty dollars annually while they shall continue in their respective offices, except to Mushulatubbe, who as he an annuity of one hundred and fifty dollars for life under a former treaty, shall receive only the additional sum of one hundred dollars, while he shall continue in office as Chief; and if in addition to this the Nation shall think propper to elect an additional principal Chief of the whole to superintend and govern upon republican principles he shall receive annually for his services five hundred dollars, which allowance to the Chiefs

and their successors in office, shall continue for twenty years. At any time when in military service, and while in service by authority of the U.S. the district Chiefs under and by selection of the President shall be entitled to the pay of Majors; the other Chief under the same circumstances shall have the pay of a Lieutenant Colonel. The Speakers of the three districts, shall receive twenty-five dollars a year for four years each; and the three secretaries one to each of the Chiefs, fifty dollars each for four years. Each Captain of the Nation, the number not to exceed ninety-nine, thirty-three from each district, shall be furnished upon removing to the West, with each a good suit of clothes and a broad sword as an outfit, and for four years commencing with the first of their removal, shall each receive fifty dollars a year, for the trouble of keeping their people at order in settling; and whenever they shall be in military service by authority of the U.S. shall receive the pay of a captain.

ARTICLE XVI. In waggons; and with steam boats as may be found necessary—the U.S. agree to remove the Indians to their new homes at their expense and under the care of discreet and carefull persons, who will be kind and brotherly to them. They agree to furnish them with ample corn and beef, or pork for themselves and families for twelve months after reaching their new homes.

It is agreed further that the U.S. will take all their cattle, at the valuation of some discreet person to be appointed by the President, and the same shall be paid for in money after their arrival at their new homes; or other cattle such as may be desired shall be furnished them, notice being given through their Agent of their wishes upon this subject before their removal that time to supply the demand may be afforded.

ARTICLE XVII. The several annuities and sums secured under former Treaties to the Choctaw nation and people shall continue as though this Treaty had never been made.

And it is further agreed that the U.S. in addition will pay the sum of twenty thousand dollars for twenty years, commencing after their removal to the west, of which, in the first year after their removal, ten thousand dollars shall be divided and arranged to such as may not receive reservations under this Treaty.

ARTICLE XVIII. The U.S. shall cause the lands hereby ceded to be surveyed; and surveyors may enter the Choctaw Country for that purpose, conducting themselves properly and disturbing or interrupting none of the Choctaw people. But no person is to be permitted to settle within the nation, or the lands to be sold before the Choctaws shall remove. And for the payment of the several amounts secured in this Treaty, the lands hereby ceded are to remain a fund pledged to that purpose, until the debt shall be provided for and arranged. And further it is agreed, that in the construction of this Treaty wherever well founded doubt shall arise, it shall be construed most favorably towards the Choctaws.

ARTICLE XIX. The following reservations of land are hereby admitted. To Colonel David Fulsom four sections of which two shall include his present improvement, and two may be located elsewhere, on unoccupied, unimproved land.

To I. Garland, Colonel Robert Cole, Tuppanahomer, John Pytchylon, Charles Juzan, Johokebetubbe, Eaychahobia, Ofehoma, two sections, each to include their improvements, and to be bounded by sectional lines, and the same may be disposed of and sold with the consent of the

President. And that others not provided for, may be provided for, there shall be reserved as follows:

First. One section to each head of a family not exeeding Forty in number, who during the present year, may have had in actual cultivation, with a dwelling house thereon fifty acres or more. Secondly, three quarter sections after the manner aforesaid to each head of family not exceeding four hundred and sixty, as shall have cultivated thirty acres and less than fifty, to be bounded by quarter section lines of survey, and to be contiguous and adjoining.

Third; One half section as aforesaid to those who shall have cultivated from twenty to thirty acres the number not to exceed four hundred.

Fourth; a quarter section as aforesaid to such as shall have cultivated from twelve to twenty acres, the number not to exceed three hundred and fifty, and one half that quantity to such as shall have cultivated from two to twelve acres, the number also not to exceed three hundred and fifty persons. Each of said class of cases shall be subject to the limitations contained in the first class, and shall be so located as to include that part of the improvement which contains the dwelling house. If a greater number shall be found to be entitled to reservations under the several classes of this article, than is stipulated for under the limitation prescribed, then and in that case the Chiefs separately or together shall determine the persons who shall be excluded in the respective districts.

Fifth; Any Captain the number not exceeding ninety persons, who under the provisions of this article shall receive less than a section, he shall be entitled, to an additional quantity of half a section adjoining to his other reservation. The several reservations secured under this article, may be sold with

the consent to the President of the U.S. but should any prefer it, or omit to take a reservation for the quantity he may be entitled to, the U.S. will on his removing pay fifty cents an acre, after reaching their new homes, provided that before the first of January next they shall adduce to the Agent, or some other authorized person to be appointed, proof of his claim and the quantity of it. Sixth; likewise children of the Coctaw Nation residing in the Nation, who have neither father nor mother a list of which, with satisfactory proof of Parentage and orphanage being filed with Agent in six months to be forwarded to the War Department, shall be entitled to a quarter section of Land, to be located under the direction of the President, and with his consent the same may be sold and the proceeds applied to some beneficial purpose for the benefit of said orphans.

ARTICLE XX. The U.S. agree and stipulate as follows, that for the benefit and advantage of the Choctaw people, and to improve their condition, their shall be educated under the direction of the President and at the expense of the U.S. forty Choctaw youths for twenty years. This number shall be kept at school, and as they finish their education others, to supply their places shall be received for the period stated. The U.S. agree also to erect a Council House for the Nation at some convenient central point, after their people shall be settled; and a House for each Chief, also a Church for each of the three Districts, to be used also as school houses, until the Nation may conclude to build others; and for these purposes ten thousand dollars shall be appropriated; also fifty thousand dollars (viz.) twenty-five hundred dollars annually shall be given for the support of three teachers of schools for twenty years. Likewise there shall be furnished to the Nation, three Blacksmiths one for each district for sixteen years,

and a qualified Mill Wright for five years; Also there shall be furnished the following articles, twenty-one hundred blankets, to each warrior who emigrates a rifle, moulds, wipers and ammunition. One thousand axes, ploughs, hoes, wheels and cards each; and four hundred looms. There shall also be furnished, one ton of iron and two hundred weight of steel annually to each District for sixteen years.

ARTICLE XXI. A few Choctaw Warriors yet survive who marched and fought in the army with General Wayne, the whole number stated not to exceed twenty.

These it is agreed shall hereafter, while they live, receive twenty-five dollars a year; a list of them to be early as practicable, and within six months, made out, and presented to the Agent, to be forwarded to the War Department.

ARTICLE XXII. The Chiefs of the Choctaws who have suggested that their people are in a state of rapid advancement in education and refinement, and have expressed a solicitude that they might have the privilege of a Delegate on the floor of the House of Representatives extended to them. The Commissioners do not feel that they can under a treaty stipulation accede to the request, but at their desire, present it in the Treaty, that Congress may consider of, and decide the application.

Done, and signed, and executed by the Commissioners of the United States, and the Chiefs, Captains and Head Men of the Choctaw Nation at Dancing Rabbit Creek, this 27th day of September, eighteen hundred and thirty.

JNO H. EATON,
JNO. COFFEE

Greenwood Leflore,
Musholatubbee,
Nittucachee,
Eyarbocuttubbee,
Iyacherhopia,
Offahoomah,
Archalater,
Onnahubbee,
Holarterhoomah,
Hopiaunchahubbee,
Zishomingo,
Captainhake,
James Shield,
Pistiyubbee,
Yobalarunehahubbee,
Holubbee,
Robert Cole
Mokelareharhopia,
Lewis Perry,
Artonamarstubbee,
Hopeatubbee,
Hoshahoomah,
Chuallahoomah,
Joseph Kincaide,
Artooklubberushpar,
Metubbee,
Arsarkatubbee,
Issaterhoomah,
Chohtabmotabab,
Tunnuppashubbee
Okecharyer,
Hoshhopia,
Warsharshahopia,
Maarshunchabubbee,
Misharyubee,
Daniel McCurtain,
Tushkerharcho,
Hoktoontabbee,
Nuknacrahookmarbee,
Mingo hoomah,
Pisinbocuttabbee,
Tullarhacher,
Little leader,
Maanhutter,
Cowehoomah,
Tillamoer,
Innullachs,
Artopilachubbee,
Shupherunchahubbee,
Nitterhoomah,
Oaklaryubbee,
Pukumna,
Arpalar,
Holber,
Hoparmingo,
Isparkoomak,
Tieberhoomah,
Tishoholarter,
Mahayarchubbee,
Arlarter,
Nittahubbee,
Tishonouan,

FISH & GAME EXHIBIT No. 103

Bureau of Indian Affairs (Realty Branch)
November 1, 1960

Office of Regional Solicitor, Portland cc: BIA Files

Rights of purchasers of Indian land in connection with hunting and fishing.

Reference is made to your memorandum of October 26, with enclosures. You ask that we answer the questions contained in your memorandum and those also set forth in the letter of October 23, from the title company. We shall answer all the questions asked, but for reasons of expediency and clarity we are not doing so in the order asked.

In the treaty at Fort Bridger of July 3, 1868, with the Bannocks and Shoshoni Indians (15 stat. 673), no mention was made of fishing within the reservation. Article 4 provides that the Indians reserved the right to hunt on the unoccupied lands of the United States so long as game may be found there on. There is no question but that the Indians of the Fort Hall Reservation, having the exclusive occupancy of their reservation, have the rights to hunt and fish within the reservation, even though such rights was not expressly reserved in the treaty. Your inquiry concerns the right of non-Indian purchaser of Indian land within the reservation boundaries. Lands to which the United States has parted title, and over which it exercises no control, even if within the exterior boundaries of the former Indian reservation, are not a part of the reservation. (State v. Big Sheep, 75 Mont. 219, 243 Pac. 1067 (1926); Nicodemas v. Washington Water Power Co., 9 Cir., 264 F. 2d 614 (1959) United States v. Oklahoma Gas & Electric Co., 10 Cir., 127 F. 2d 349 (1942) affirmed 318 U.S. 206) With this in mind and relying upon the cases of the United States ex rel Bay v. Hibner, 27 F. 2d 909, and State v. Johnson, 249 N.W. 284 (Wisc. 1933), the Solicitor in a memorandum dated February 23, 1960, relative to the right of the Coeur d'Alene Indians to

hunt on fee pattented lands, held there is no reserved right vested in the Indian authorizing their hunting or fishing on the land after the land passes out of Indian ownership.

Therefore, the fee patenting of the land to non-Indian removes the land from the reservation and carries with it the right of the non-Indian to hunt thereon and to fish in the stream running through the land as an incident of his ownership. It subjects such hunting and fishing to state jurisdiction. Other non-Indians cannot hunt or fish thereon without the consent of the non-Indian landowner, and such permission, of course, cannot be given by the Indian Tribe, as the land is no longer a part of the Indian reservation.

The treaty reservation for hunting on the unoccupied lands of the United States is not confined to the reservation, but its terms cannot include lands to which the United States has passed title and which are now fee owned and on which the hunting right reserved by treaty no longer exists.

The non-Indian landowner is under state law. He may hunt and fish upon his own land and invite others to do so upon the land, but all must comply with applicable state laws and regulations concerning such matters. Permits must be obtained from the state authorities, and violations will be prosecuted by the state officials. The purchaser or fee owner of Indian land within the reservation is in the same category as any other non-Indian citizen of the state. His acquisition in fee destroys any and all the former rights of the Indians in and to the property, even though the land remains within the exterior boundaries of the former Indian reservation.

There is nothing in the Indian Reorganization Act

which alters the above principles. Fee owned land acquired prior to the passage of the Act, as well as fee owned land acquired after the passage, are both governed by the application of the legal principles above stated.

The owner of the fee owned land should either post or enclose his land in accordance with state law to prevent trespasses thereon and to permit prosecution for trespass under state law. The amendments to Title 18 of U.S.C.A. (74 Stat. 400) relative to posting of Indian lands and hunting and fishing on Indian lands have no application to former Indian lands that have been fee patented or sold to non-Indian landowners.

The title company in its letter of October 23, is concerned with the ownership of an Island in the Snake River, omitted from the original government survey, and now designated as Lots 13 and 14 in Section 31, Township 3, Range 34, East, and Lots 7 of Section 30, in the same Township and range. A map showing the former and present meanders and the location of the island accompanied your memorandum.

The Fort Hall Reservation was established by Executive Order of June 14, 1867. (1 Kappler, Indian Affairs, pages 836-837).

The order describes the reservation boundaries in part as "down the Snake River to the place of beginning". "Along" and "down" the river are synonymous (Sweet v. Irrigation Canal Company, 256 P. 2d 252 (Oregon): Brown v. Huger, 62 U.S. (21 How.) 305, 320). The instant situation is therfore parallel to that in *United States* v. Ahtamm Irrigation District, 236 F. 2d 321, 9 cir), cert. denied 352 U.S. 988, where the description was "along" the river of the non-navigable stream and the court held

that the boundary of the reservation was the center of the stream or river. The boundary of the Fort Hall Reservation is the middle of the Snake River, as apparently that river is not considered to be navigable. (ICA 36-907—1927 designated by Idaho Legislature as navigable to Big Springs.) (Last entry mine. H.T.)

We do not know the facts concerning the formation of the island, but assume that it was always there and was omitted from the original survey. Under such circumstances, the island since it is crossed by the center line of the entire stream is owned in part by the owners of what is designated as Lots 7, 9, and 10 and partly by whoever owns the lands on the other side of the river facing the island. The island belongs in severity to the proprietors on each side. (See Clark on Surveying and Boundaries, 3rd Ed., Section 641 and cases cited.)

We return the submitted correspondence and documents.

For the Regional Solicitor

Johnston Wilson
Attorney

Attachment

CSCohn:JW:dwj

FISH & GAME EXHIBIT No. 115

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington, 25, D.C.

Through: Area Director, Billings, Mont.

Chairmen
Crow Tribal Council

Dear Mr. Chairman:

On August 24, the Crow Tribal Council enacted Resolution No. 149 concerning the regulation of hunting and fishing on the Crow Reservation. The resolution states that hunting and fishing within the boundaries of the reservation have been reserved by treaty for the exclusive benefit of the Crow Indians. It provides that hunting for game birds or game animals or fishing on any land within the Crow Reservation by other than members of the Crow Tribe and their spouses shall be unlawful except with a tribal permit. It also provides that a penalty of not less than $25 nor more than $300, or a sentence of imprisonment for a term of three months shall be imposed for violation of the resolution. The resolution would affect non-Indians and non-member Indians.

We have been unable to substantiate the provision that hunting and fishing on the Crow reservation have been reserved exclusively to tribal members by a treaty with the United States. The treaty of May 7, 1868 (15 Stat. 64); 2 Kapp. 775), by which the reservation was created, provides, in Article 4, that the Indians shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts. The treaty makes no reservation of exclusive rights to the Indians to hunt and fish within the reservation. We have found no other treaty agreement with the Indians ratified by law, or Federal statute subsequent to the 1868 treaty that affords such exclusive rights.

There is a considerable area of fee-patented land within the reservation owned by non-Indians. We are

not aware of any judicial decision that an Indian tribe has the power and authority to prohibit non-Indians owning land within a reservation from hunting or fishing on such land, particularly in the absence of a clearly established exclusive right in the Indians.

Aside from the foregoing, however, the resolution appears to be fatally defective. It purports to subject non-Indians to criminal sanctions imposed by tribal authority. An Indian tribe has no criminal jurisdiction over non-Indians. See Cohen, Handbook of Federal Indian Law, p. 148. The Assistant Secretary of the Interior, in a letter dated June 4, 1954, to the Director of the Minneapolis Area Office of this Bureau, stated as follows: "Section 1 (a) of Article VI of the tribal constitution empowers the Lac du Flambeau Tribal Council to enact ordinances for the protection of fish and game but neither that nor any other provision of the constitution confers jurisdiction on the tribe to enforce criminal sanctions against nonmembers of the tribe. The ordiance, therefore, is ineffective because its intent is beyond the constitutional power of the tribe." In addition, the court in which the criminal sanctions would be enforced is the Court of Indian Offenses maintained under Departmental regulations, 25 CFR, and that court has jurisdiction only over offenses committed by Indians. (See 25 CFR 161.2, and our memorandum of August 30, 1954, a copy of which is enclosed with our letter regarding Ordinance No. 3.) Because Resolution No. 149 is beyond the power of the tribe and is therefore ineffective, we can not approve it. No purpose would be served by its disapproval by the Secretary of the Interior since it is already a nullity.

Sincerely yours,

Commissioner

cc: Branch of Land Operations
Branch of Tribal Programs
Billings Area Office
Crow Agency